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6 IN THE COURT OF APPEALS
7 OF THE STATE OF WASHINGTON
8 DIVISION II

9 IN RE THE PERSONAL RESTRAINT
10 PETITION OF:

11 JEFFERY LAMONT RANDALL,

12 Petitioner.

NO. 45994-9-II

STATE'S RESPONSE TO
PERSONAL RESTRAINT PETITION

13
14 A. ISSUES PERTAINING TO DISCRETIONARY REVIEW

15 1. Does the petition seek unwarranted successive review when petitioner's claims
16 of insufficient evidence, double jeopardy, instructional error, prosecutorial misconduct, and
17 judicial error were justly rejected on direct appeal?

18 2. Should the Court dismiss the unfounded allegations petitioner was deprived the
19 right to be present at a critical stage proceeding and that the trial court mishandled *in camera*
20 review?
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22 3. Has petitioner raised frivolous ineffective assistance of counsel and speedy trial
23 claims clearly refuted by the record?
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1 B. STATUS OF PETITIONER

2 Petitioner is restrained pursuant to a 168 month sentence imposed after the jury found
3 him guilty of involving two minors in a transaction to deliver a controlled substance as well as
4 delivering a controlled substance to them with sexual motivation. App.A. He had an offender
5 score of 10. *Id.*

6 The trial proved petitioner was a 40-year-old known to several high school students as
7 "Weed Man". App.B at 2. "From approximately March to early June, 2008, [petitioner] picked
8 up [two fifteen year old girls] every day after school. They drove around ... selling marijuana
9 out of his car. But before [petitioner] permitted [the girls] to sell marijuana, he put them
10 through loyalty tests. These tests included taking about themselves while naked, kissing him,
11 and taking their shirts off for him ... After they passed the loyalty tests, [they] participated in
12 [petitioner's] sales by weighing the marijuana, collecting money, and taking marijuana to sell at
13 school [Petitioner] regularly gave [the girls] marijuana and alcohol for their own personal
14 use and he sometimes gave them a portion of the sale proceeds as compensation. [Petitioner]
15 called [victim] HT and VN 'Mama' and 'Little Mama' and made them call him 'Papa.' ... When
16 he became irritated ... he ... scared them by t[alking] about his 'goons'. ... [The victims] feared
17 [petitioner's goons] as dangerous men who would hurt people at his command." App.B at 2-3.

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19 Petitioner's convictions were affirmed on direct appeal. App. B. This court held: (1)
20 failure to give a unanimity instruction was harmless as no rational jury could entertain a
21 reasonable doubt each criminal act was proved beyond a reasonable doubt; (2) sufficient
22 evidence supported the findings of sexual motivation; (3) the verdicts were consistent; (4) the
23 convictions complied with double jeopardy; and (5) the special verdict instruction was properly
24 drafted. App.B. 9-11, 14, 16.
25

1 This Court also ruled on petitioner's statement of additional authority by deciding: (1)
2 petitioner was not improperly denied a missing witness instruction; (2) petitioner did not
3 preserve or adequately articulate a challenge to the arresting officer's absence; (3) the
4 admissibility of petitioner's jail interview was based on matters outside the record; (4)
5 petitioner failed to prove prosecutorial misconduct; (5) his challenge to the adequacy of the
6 record was inadequately supported; (6) time for trial claim was improperly raised; (7)
7 unobjected to evidentiary error related to marijuana discovered in a seized backpack was not
8 reviewable; and (8) the *Brady* allegations failed. *Id.* at 17-21. Review was terminated by
9 Mandate December 11, 2013. App.C. Petitioner's collateral attack was timely filed. *See* RCW
10 10.73.090 (3)(b).
11

12 C. ARGUMENT

13 Personal restraint procedure has its origins in the State's habeas corpus remedy,
14 guaranteed by article 4, section 4, of the State Constitution. A personal restraint petition, like a
15 petition for a writ of habeas corpus, is not a substitute for an appeal. *In re Hagler*, 97 Wn.2d
16 818, 823-824, 650 P.2d 1103 (1982). Collateral relief undermines the principles of finality of
17 litigation, degrades the prominence of the trial, and sometimes costs society the right to punish
18 admitted offenders. *Id.*; *In re Woods*, 154 Wn.2d 400, 409, 114 P.3d 607 (2005). These
19 significant costs require collateral relief to be limited in the state as well as federal courts. *Id.*
20

21 In this collateral action, petitioner must show constitutional error resulted in actual
22 prejudice. Mere assertions are insufficient to demonstrate actual prejudice. The rule that
23 constitutional errors must be shown to be harmless beyond a reasonable doubt has no
24 application in the context of personal restraint petitions. *In re Mercer*, 108 Wn.2d 714, 718-
25 721, 741 P.2d 559 (1987); *Hagler*, 97 Wn.2d at 825; *Woods*, 154 Wn.2d 409. A petitioner
must show "a fundamental defect which inherently results in a complete miscarriage of justice"

1 to obtain collateral relief from an alleged nonconstitutional error. *In re Cook*, 114 Wn.2d 802,
2 812 792 P.2d 506 (1990); *Woods*, 154 Wn.2d 409. This is a higher standard than the
3 constitutional standard of actual prejudice. *Cook*, at 810. Any inferences must be drawn in
4 favor of the validity of the judgment and sentence and not against it. *Hagler*, 97 Wn.2d at 825-
5 826. "This high threshold requirement is necessary to preserve the societal interest in finality,
6 economy, and integrity of the trial process. It also recognizes the petitioner ... had an
7 opportunity to obtain judicial review by appeal." *Woods*, 154 Wn.2d at 409.

8 Reviewing courts have three options in evaluating personal restraint petitions:

- 9 1. If a petitioner fails to meet the threshold burden of showing actual
10 prejudice from constitutional error or a fundamental defect resulting in a
miscarriage of justice, the petition must be dismissed;
- 11 2. If a petitioner makes at least a prima facie showing of actual prejudice,
12 but the merits of the contentions cannot be determined solely on the
13 record, the court should remand for a full hearing on the merits or for a
reference hearing pursuant to RAP 16.11(a) and RAP 16.12;
- 14 3. If the court is convinced a petitioner has proven actual prejudicial error
15 arising from constitutional error or a fundamental defect resulting in a
16 miscarriage of justice, the court should grant the personal restraint
petition without remanding the cause for further hearing.

17 *In re Hews*, 99 Wn.2d 80, 88, 660 P.2d 263. A petition must be dismissed when the petitioner
18 fails to provide sufficient evidence to support his claim. *Williams*, 111 Wn.2d at 364; *In re*
19 *Spencer*, 152 Wn. App. 698, 707, 218 P.3d 924 (2009); *In re Gentry*, 137 Wn.2d 378, 389,
20 972 P.2d 1250 (1999).

- 21 1. SUCCESSIVE REVIEW OF PREVIOUSLY DECIDED CLAIMS
22 WILL NOT SERVE THE ENDS OF JUSTICE AS THEY WERE
APPROPRIATELY REJECTED ON DIRECT APPEAL.

23 "A claim rejected on its merits on direct appeal will not be reconsidered in a subsequent
24 personal restraint petition unless the petitioner shows ... the ends of justice would be served
25 thereby." *In re Jeffries*, 114 Wn.2d 485, 487-88, 789 P.2d 731 (1990) (citing *In re Taylor*,
105 Wn.2d 683, 687, 717 P.2d 755 (1986); see also RAP 16.4(d); *In re Haverty*, 101 Wn.2d

1 498, 503, 681 P.2d 835 (1984)). "Simply revising ... previously rejected legal argument ...
2 neither creates a new claim nor constitutes good cause to reconsider the original claim ...
3 [I]dential grounds may often be proved by different factual allegations. So also, identical
4 grounds may be supported by different legal arguments, ... or be couched in different language,
5 ... or vary in immaterial respects." *Id.* at 487 (*quoting Sanders v. United States*, 373 U.S. 1, 16,
6 83 S. Ct. 1068, 10 L. Ed. 2d 148 (1963)); *In re Lord*, 123 Wn.2d 296, 329-30, 868 P.2d 835
7 (1994). "A personal restraint petition is not meant to be a forum for relitigation of issues
8 already considered on direct appeal, but rather is reserved for consideration of fundamental
9 errors which actually prejudiced the prisoner." *Lord*, at 329 (*citing In re Runyan*, 121 Wn.2d
10 432, 453-54, 853 P.2d 424 (1993)).

11 Petitioner's reformulated claims of insufficient evidence, double jeopardy, instructional
12 error, prosecutorial misconduct, and judicial error do not warrant successive review because
13 this Court accurately decided them on direct appeal. App.B.

14 a. Petitioner's successive insufficient evidence claim
15 should fail.

16 This Court already decided petitioner's convictions were supported by sufficient
17 evidence when its application of the more rigorous harmless error standard led it to conclude
18 no rational juror could have entertained a reasonable doubt each criminal act was proved. App.
19 B at 7, 9-10. Petitioner's arguments against that considered result are wrongly predicated on an
20 antagonistic interpretation of the State's evidence in addition to irrelevant disagreements with
21 the jury's implied assessment of the victims' credibility. Those arguments cannot be reconciled
22 with the applicable standard of review, which admits the truth of the State's evidence with all
23 reasonable inferences drawn therefrom. *See State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654
24 (1993); *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111
25 Wn.2d 1033 (1988) (*citing State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)); *State v.*

1 *Turner*, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981); *State v. Salinas*, 119 Wn.2d 192, 201,
2 829 P.2d 1068 (1992)). Petitioner's disagreements with the jury's positive assessment of the
3 victims' credibility is similarly incompatible with the deference extended to a jury's resolution
4 of conflicting testimony, credibility of witnesses, as well as the persuasiveness of evidence. See
5 *In re A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991); *In re Perry*, 31 Wn. App. 268, 269,
6 641 P.2d 178 (1982); *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985). Further testing
7 of the evidence's sufficiency could not serve the ends of justice as this Court already ruled no
8 rational juror could reasonably doubt the underlying criminal acts were proved. App.B at 7, 9-
9 10; See *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993).

11 b. The successive challenge to the evidentiary
12 sufficiency of the sexual motivation findings should
13 fail.

14 This Court already held the victims' "testimony provided sufficient evidence to support
15 the findings [petitioner] delivered controlled substances to them for the purpose of his sexual
16 gratification." App.B. at 11. The testimony established petitioner "treated [the victims] as his
17 girlfriends, ...gave them marijuana in part because he wanted them to perform sexual acts ...
18 and received sexual gratification from th[os]e acts." App.B. at 12. Petitioner argues the jury
19 erred in believing that testimony; however, the jury's implied acceptance of the testimony is a
20 credibility determination beyond review.

21 c. Petitioner's successive misconduct claim should fail.

22 This Court rejected the prosecutorial misconduct claim petitioner asserted on direct
23 appeal. There, as here, he claims the State abused its authority by filing additional charges
24 before trial. App.B. at 18-19. He again fails to support the accusation with anything more than
25 baseless speculations about prosecutor's motive, so he has again failed to meet his burden of
proof.

1 Petitioner erroneously contends the initial charging decision fixed the State's discretion
2 to amend the Information. Due process is not violated when a prosecutor merely increases the
3 degree or number of charges. *See State v. Lee*, 69 Wn. App. 31, 37, 847 P.2d 25 (1993)(citing
4 *United States v. Goodwin*, 457 U.S. 368, 382–84, 102 S.Ct. 2485, 2491–92, 73 L. Ed. 2d 74
5 (1982). "A defendant's ultimate protection against overcharging lies in the requirement that the
6 State prove all elements of the charged crime beyond a reasonable doubt." *Id.* at 37-38.
7 Petitioner's jury found that burden was met as to the challenged convictions. And the validity of
8 those verdicts has been affirmed. App.B. 7, 9-10.

9 d. Petitioner's reformulated double jeopardy argument
10 should be rejected.

11 This Court rejected the merits of the double jeopardy argument petitioner made on
12 direct appeal. App.B. at 14.¹ Revisiting a reformulation of the same legal argument does not
13 serve the ends of justice. *See Jeffries*, 114 Wn.2d at 487 (quoting *Sanders*, 373 U.S. at 16);
14 *Lord*, 123 Wn.2d at 329-30).

15 Examination of the reformulated argument nonetheless proves it wanting in several
16 respects. Petitioner proposes double jeopardy was violated when the Pierce County Superior
17 Court, which presided over the felony trial, admitted evidence allegedly "used" for the
18 misdemeanor marijuana charge prosecuted in the Tacoma Municipal Court. PRP 23. Petitioner
19 appears to believe facts amounting to an offense charged in one case cannot be admitted as
20 circumstantial evidence of different offenses in another case without violating double jeopardy.
21 PRP 23, 25, 27. The double jeopardy clause is not a constitutionally grounded evidentiary rule
22 of exclusion. It governs whether certain conduct may be constitutionally prosecuted as an
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25 ¹ This Court rejected this permutation of petitioner's several double jeopardy arguments in the direct appeal
because it depended on matters outside the record. App.B. at 15, Fn. 10. (citing *State v. McFarland*, 127 Wn.2d
322, 335, 899 P.2d 1251 (1995).

1 offense, not whether evidence seized by police may be lawfully admitted as evidence in a
2 criminal trial. *See In re Shale*, 160 Wn.2d 489, 498-99, 158 P.3d 588 (2007).

3 Petitioner also mistakenly argues the misdemeanor marijuana possession prosecuted in
4 the Tacoma Municipal Court was prosecuted a second time at the trial resulting in the
5 challenged felony convictions. The double jeopardy clause prevents the State from prosecuting
6 a defendant twice for the same offense. *State v. Corrado*, 81 Wn. App. 640, 645, 915 P.2d 1121
7 (1996). Offenses involving the possession of contraband are not the same if they involve
8 different contraband possessed on different days under different circumstances. *See Shale*, 160
9 Wn.2d at 498; *State v. McPhee*, 156 Wn.App. 44, 57, 230 P.3d 284 (2010); *State v. Adel*, 136
10 Wn.2d 629, 640-41, 965 P.2d 1072 (1998)(Talmadge, J., concurring).²

11 Petitioner concedes he possessed the marijuana underlying his misdemeanor conviction
12 June 16, 2008. PRP 22.³ Whereas his felony offenses for involving minors in drug transactions
13 and delivering a controlled substance to them with sexual motivation occurred "during the
14 period between the 1st day of March, 2008, and the 4th day of June, 2008. App.D at 3(emphasis
15 added). Throughout that period petitioner "picked up [his juvenile victims] every day after
16 school. They drove around ... selling marijuana out of his car... [The victims] participated in
17 [petitioner's] sales by weighing the marijuana, collecting the money, and taking marijuana to
18 sell at school" App.B. at 3(emphasis added). There is no established connection between the
19 marijuana petitioner's child victims sold to other people before June 5, 2008, and the marijuana
20 he was arrested for possessing June 16, 2008. Petitioner's misdemeanor and felony offenses
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23 ² "[I]f a person were in possession of 20 grams of marijuana and used the substance in its entirety, and, thereafter,
24 several days later acquired another 15 grams of marijuana for personal use, two distinct units of prosecution are
likely present under such circumstances."

25 ³ Petitioner also appears to confuse evidence found on his person and inside the passenger compartment of his
vehicle incident to his misdemeanor arrest with photographs of the vehicle taken several days later during the
execution of a valid search warrant which also resulted in the seizure of marijuana contraband recovered from his
vehicle's trunk. App.E (Warrant; Complaint; Return; VRP VOL 1 at 78-79, 108-113).

1 were not the same.⁴ See RCW 69.50.4014, *compare with* RCW 69.50.4015; RCW
2 69.50.401(1)(2)(b); 69.50.406(2); *Shale*, 160 Wn.2d at 498; *McPhee*, 156 Wn.App. at 57; *Adel*,
3 136 Wn.2d at 640-41; *State v. Calle*, 125 Wn.2d 769, 772, 888 P.2d 155 (1995); *State v.*
4 *Freeman*, 153 Wn.2d 765, 771, 108 P.3d 753 (2005) (*quoting In re Orange*, 152 Wn.2d 795,
5 815, 100 P.3d 291 (2004); *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 76
6 L.Ed. 306 (1932)).⁵ A double jeopardy violation did not occur.

7 e. Petitioner's successive *Brady* claim should fail.

8 This Court already rejected petitioner's claim the State violated its discovery obligations
9 under *Brady v. Maryland*, 373 U.S. 83, 87; 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). App.B at
10 20-21. He has not adduced any evidence to call the wisdom of that decision into question.
11 Petitioner's reformulated claim alleges the State violated *Brady* by objecting to counsel's
12 request for additional interviews of previously deposed juvenile victims, objecting to the
13 disclosure of the victims' confidential records, and producing a case-related email roughly five
14 months before trial. PRP 30-36. He also finds a *Brady* violation in the trial court's alleged
15 refusal to release victim records following *in camera* review. PRP 30-36.

16 *Brady* held "the suppression by the prosecution of evidence favorable to an accused ...
17 violates due process where the evidence is material either to guilt or to punishment, irrespective
18 of the good faith or bad faith of the prosecution." 373 U.S. at 87, 83 S.Ct. 1194; *see also United*
19 *States v. Agurs*, 427 U.S. 97, 107, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976); *United States v.*
20 *Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985); *Kyles v. Whitley*, 514
21 U.S. 419, 433-34, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). Courts use a three-part test to
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23 ⁴ Petitioner attempts to augment his double jeopardy argument with a claimed violation of CrR 4.3's mandatory
24 joinder rule. Assuming *arguendo* mandatory joinder applied, it was waived when it was not raised by at least the
25 time his misdemeanor plea was entered. CrR 4.3.1(2). The rule is nevertheless inapplicable as possession of
marijuana June 16, 2008, is not "related" to petitioner's sexually motivated delivery of marijuana to juveniles
between March 1, 2008 and June 4, 2008. See *State v. Bradley*, 38 Wn. App. 597, 599, 687 P.2d 856 (1984). A
miscarriage of justice did not occur.

⁵ A comprehensive explanation of the felony offenses is provided at pages 15-19 of the State's response to
petitioner's direct appeal. App.F.

1 measure a **Brady** claim: (1) the identified evidence must be "favorable" to the accused, either
2 because it is exculpatory or because it is impeaching; (2) the evidence must have been
3 suppressed by the State, either willfully or inadvertently; and (3) the suppressed evidence must
4 be "material" to the accused's guilt or punishment—*i.e.*, prejudice must have ensued. *See*
5 **Strickler v. Greene**, 527 U.S. 263, 281–82, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999); *see also*
6 **United States v. Cooper**, 173 F.3d 1192, 1202 (9th Cir.1999).

7 Two of petitioner's frivolous claims are grounded in petitioner's erroneous belief **Brady**
8 prevents the State from objecting to defense discovery demands. Prosecutors do not "suppress"
9 evidence when they avail themselves of judicial process⁶ designed to regulate discovery. The
10 prosecutor properly objected to the request petitioner's fourth attorney made for a second
11 interview of the juvenile victims because they had already been deposed⁷ by petitioner's second
12 attorney. App.G at 12-13. It was the Judge who appropriately disallowed the interviews, not the
13 State. *Id.* at 21. As for the counseling records, the State simply urged the court to adhere to the
14 statutory protections set forth in RCW 70.125.065.⁸ App.H. Neither circumstance involved the
15 prosecutor improperly withholding evidence in violation of **Brady**. And the trial court's alleged
16 failure to release records following *in camera* review cannot be held against the State.

19 ⁶ CrR 4.7(4) Protective Orders. Upon a showing of good cause, the court may at any time order that specified
20 disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and
information to which a party is entitled must be disclosed in time to permit the party's counsel to make beneficial
use thereof"

21 ⁷ Depositions an extraordinary vehicle for discovery in criminal cases. *See* CrR 4.6(a); **State v. Gonzalez**, 110
Wn.2d 738, 744, 757 P.2d 925 (1988).

22 ⁸ RCW 70.125.065. Records of community sexual assault program ... not available as part of discovery-Exceptions.
23 "Records maintained by a community sexual assault program ... shall not be made available to any defense attorney
as part of discovery in a sexual assault case unless: (1) A written pretrial motion is made by the defendant to the
24 court stating that the defendant is requesting discovery of the ... records; (2) The written motion is accompanied by
an affidavit[(s)] setting forth specifically the reasons why the defendant is requesting discovery of the ... records;
25 (3) The court reviews the ... records *in camera* to determine whether the ... records are relevant and whether the
probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records
taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the
defendant; and (4) The court enters an order stating whether the records or any part of the records are discoverable
and setting forth the basis for the court's findings."

1 Petitioner's **Brady** challenge to the timing of the email disclosure is untenable since
2 petitioner received it several months before trial, making it reasonably available for the
3 preparation of his defense. App.B. at 21; see **Cunningham v. Wong**, 704 F.3d 1143, 1153–54
4 (9th Cir.) *cert. denied*, 134 S. Ct. 169 (2013); **United States v. Aichele**, 941 F.2d 761, 764 (9th
5 Cir.1991); CrR 4.7 (4); App.B. at 21 (*citing Stickler v. Greene*, 527 U.S. 263, 280, 119 S. Ct.
6 1936, 144 L.Ed.2d 286 (1999)).

7 f. Petitioner's successive instructional error claim
8 should fail.

9 Petitioner's continued disagreement with this Court's well reasoned decision that the
10 absence of a **Petrich** was harmless is not a legitimate basis for successive review.
11 Uncontroverted evidence established petitioner employed two fifteen year girls in his illicit
12 marijuana enterprise. App.B. at 2-3. On nearly a daily basis—over the course of several
13 weeks—petitioner gave those juveniles marijuana to prepare for sale. *Id.* This Court's careful
14 comparison of analogous authority led it to affirm petitioner's convictions. App.B (*citing State*
15 *v. Bobenhouse*, 166 Wn.2d 881, 893, 214 P.3d 907 (2009); **State v. Camarillo**, 115 Wn.2d 60,
16 794 P.2d 850 (1990); **State v. Allen**, 57 Wn. App. 134, 139, 787 P.2d 566 (1990)) Petitioner
17 attacks the Court's reasoning as inconsistent with **State v. York**, 152 Wn. App. 92, 216 P.3d 436
18 (2009). **York** found the existence of controverted evidence prevented an erroneously omitted
19 **Petrich** instruction from being harmless. *Id.* at 96. Petitioner's case is consistent with that result
20 since harmless error predominately resulted from the absence of controverted evidence. *See*
21 App.B at 7, 9-10; **York**, 152Wn. App. at 96. Successive review is unwarranted.⁹

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25 ⁹ The State additionally relies on the briefing contained in its response to petitioner's direct appeal. App.F at 9-29.

- 1
- 2 2. THE COURT SHOULD DISMISS PETITIONER'S UNFOUNDED
- 3 ALLEGATIONS HE WAS DEPRIVED THE RIGHT TO BE
- 4 PRESENT AT A CRITICAL STAGE PROCEEDING AND THAT
- 5 THE TRIAL COURT MISHANDLED IN CAMERA REVIEW.

6 A litigant proceeding *pro se* must comply with all procedural rules. *In re Marriage of*

7 *Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Arguments need not be considered when

8 they are inadequately supported by pertinent authority or meaningful analysis. *See State v.*

9 *Marintorres*, 93 Wn. App. 442, 452, 969 P.2d 501 (1993); *State v. Wheaton*, 121 Wn.2d 347,

10 365, 850 P.2d 507 (1993); *Cowiche Canyon Conservancy v. Boseley*, 118 Wn.2d 801, 809,

11 828 P.2d 549 (1992); *State v. Elliot*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990); *Saunders v.*

12 *Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989); *Petition of Williams*, 111

13 Wn.2d 353, 759 P.2d 436 (1988); RAP 16.7(a)(2). PRPs must be supported by affidavits

14 stating particular facts, certified documents, certified transcripts, and the like. *Williams*, 111

15 Wn.2d at 364; *see also In re Connick*, 144 Wn.2d 442, 28 P.3d 729 (2001). Allegations based

16 on matters outside the existing record must be supported by proof of competent, admissible

17 evidence capable of establishing entitlement to relief. *Connick*, at 451. Inadequately supported

18 petitions must be dismissed. *Williams*, 111 Wn.2d at 364.

- 19 a. There is no evidence to support the allegation
- 20 petitioner's right to be present was denied.

21 Petitioner argues his right to be present was violated because counsel were called into

22 court during deliberations to address the court's proposed response to the question posed by the

23 jury. App.B. at 19. The issue was not addressed on direct appeal because it was inadequately

24 supported by the record. *Id.* Petitioner endeavors to prove the claim in the PRP with letters

25 from his trial and appellate counsel; however, those letters unambiguously establish there is no

1 record of the purported conference. PRP App. A.¹⁰ The challenged conference only exists as an
2 unverifiable possibility beyond any identified person's ability to confirm or deny, so the claim
3 predicated on its existence must fail. *Id.*; see *State v. Jasper*, 174 Wn.2d 96, 123-24, 271 P.3d
4 876 (2012)(reviewing courts "will not, for the purpose of finding reversible error, presume the
5 existence of facts as to which the record is silent.").

6 Petitioner mistakenly believes he has a constitutional right to be "present at all of his
7 proceedings." PRP 1. His claim would fail even if the conference occurred as a criminal
8 defendant does not have a right to be present at bench conferences on legal matters, at least
9 where those matters do not require the resolution of disputed facts. See *Matter of Lord*, 123
10 Wn.2d, 296, 306, 868 P.2d 835 (1994); see also *In re Pirtle*, 136 Wn.2d 467, 484, 965 P.2d 593
11 (1998); *State v. Irby*, 170 Wn.2d 874, 881, 246 P.3d 796 (2011); *State v. Sublett*, 156 Wn. App.
12 160, 182, 231 P.3d 231 ("[B]ecause the in-chambers conference held in response to a jury
13 question was not a critical stage of the proceedings, we hold that the court did not violate the
14 appellants' right to be present.") *affirmed*, 176 Wn.2d 58, 292 P.3d 715 (2012). Since "the right
15 is not triggered where presence would be useless", it could not be violated at the alleged
16 conference as the decision whether to object to the court's proposed response to a jury question
17 on the law is a matter entrusted to counsel's professional judgment. See *In re Stenson*, 142
18 Wn.2d 710, 736, 16 P.1 (2001); *State v. Jones*, 175 Wn. App. 87, 105, 303 P.3d 1084
19 (2013)(citing *Snyder v. Massachusetts*, 291 U.S. 97, 105-07, 54 S. Ct. 330, 78 L. Ed. 674
20 (1934); *overruled in part on other grounds, Malloy v. Hogan*, 378 U.S. 1, 84 S. Ct. 1489, 12 L.
21 Ed. 2d 653 (1964)). Even if the right to be present was implicated by the purported conference,

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23 ¹⁰ 2/14/12 WA Appellate Project letter: "As I told you in my last letter, no jury question was reflected in the
24 record—either in the transcript, nor [sic] in the clerk's papers. I did speak with Ms. Pierson, who unfortunately **does**
25 **not recall there being a jury question in your case, either.**"; 11/6/13 DAC trial attorney Jane Pierson letter: "I
told her that I thought that the jury had sent out a question (which the Court did not answer—simply referred them
back to the Instructions they already have [sic].... **Without a clear memory that a question was sent out**, what
the question was, and without any record of a question, I cannot in good conscience, prepare an affidavit ... I even
went so far as to speak with the prosecutor to find out if she remembered a question from the jury: she did not....".

1 petitioner's absence would not be a basis for reversal since the court did not provide the jury
2 affirmative information merely by redirecting it to the instructions it previously received. *See*
3 FN. 10, *supra*; **Sublett**, 156 Wn. App. at 182, *compare with State v. Besabe*, 166 Wn. App. 872,
4 882-83, 271 P.3d 387 (2012)(*citing* CrR 6.15(f)(1)); **State v. Ratliff**, 121 Wn. App. 642, 646,
5 271 P.3d 387 (2012)).

6 Petitioner also mischaracterizes the conference as an *ex parte* proceeding, for the
7 allegation maintains both parties' counsel were given an opportunity to respond to the court's
8 answer before it was delivered to the jury. Under those facts, defense counsel was present to
9 protect petitioner's interests. **State v. Brown**, 29 Wn. App. 11, 16, 627 P.2d 132 (1981).

10 b. The factually unsupported claim of improper *in camera* review should fail.
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12 CrR 4.7(6) sets forth the rule based procedure for conducting *in camera* review:

13 Upon request of any person, the court may permit any showing of cause for denial
14 or regulation of disclosure, or portion of such showing, to be made *in camera*. A
15 record shall be made of such proceedings. If the court enters an order granting
16 relief following a showing *in camera*, the entire record of such showing shall be
17 sealed and preserved in the records of the court, to be made available to the
18 appellate court in the event of an appeal.

19 To justify *in camera* review of a confidential record the defendant must establish a basis
20 for the claim it contains material evidence. **State v. Gregory**, 158 Wn.2d 759, 791, 147 P.3d
21 1201 (2006)(*citing Pennsylvania v. Ritchie*, 480 U.S. 39, 58 n.15, 107 S. Ct. 989, 94 L. Ed. 2d
22 40 (1987)). A defendant cannot surpass that procedural requirement absent a particularized
23 factual showing information useful to the defense is likely to be found in the records. **State v.**
24 **Diemel**, 81 Wn. App. 464, 468, n.9, 914 P.2d 779 (1996)(*citing State v. Kalakosky*, 121 Wn.2d
25 525, 550, 852 P.2d 1064 (1993)). The decision whether to conduct *in camera* review or to deny
disclosure after review will not be reversed absent an abuse of discretion. **Gregory**, 158 Wn.2d
at 791 (*citing Kalakosky*, 121 Wn.2d at 550); **State v. Blackwell**, 120 Wn.2d 822, 830, 845,

1 P.2d 1017 (1993). Discretion is abused when a decision is manifestly unreasonable, or is
2 exercised on untenable grounds, or for untenable reasons. *Id.*

3 Petitioner's entire challenge to the *in camera* proceedings must fail because it is
4 expressly predicated on a speculative hypothetical that the requested records contained
5 materially exculpatory information. PRP 36¹¹

- 6 i. The claim related to the victim's truancy
7 records should be rejected.

8 Truancy files are confidential absent a claim to one of the limited statutory exceptions.
9 See RCW 13.50.010 and 13.50.100. Op.Atty.Gen. 1996 No.1; see also RCW 13.50.050 (3).

10 The first problem with petitioner's claim is he has yet to establish the trial court ever
11 received the requested truancy file or conducted *in camera* review of it. Page 7 of the transcript
12 he provides to prove his claim strongly suggests *in camera* review never occurred:

13 "[I] think in this particular situation [an *in camera* review] [i]s not a good idea
14 because I wouldn't have the slightest clue without having the testimony to know
15 what is or isn't cross examination material." PRP Ex.A (RP 7).

16 Petitioner's trial counsel impliedly agreed with that assessment. See *Id.* It does not appear the
17 matter was readdressed from the record presented.

18 No less fatal is defense counsel's candid admission her request for the truancy file was a
19 "fishing expedition":

20 "I'm fishing. I have to put it in those terms. I don't know anything about it. If
21 there's something that has to do with her credibility or whatever, I think it should
22 be provided. If not provided to me, then in camera to the Court. It's a fishing
23 expedition, I admit that, because I have no idea what it's about."

24 PRP Ex. A (RP 6). "The mere possibility ... an item of undisclosed evidence might have helped
25 the defense or might have affected the outcome of the trial ... does not establish materiality in

¹¹ "To the extent, the proceedings produced exculpatory material...The information could have impeached the testimony and credibility of the State's witnesses ... or provide[d] Randall the ability to fight specific facts instead of generalities.". (emphasis added).

1 the constitutional sense." *State v. Mak*, 105 Wn.2d 692,) *habeas corpus petition granted in part*
2 *on other grounds*, 754 F.Supp. 1490 (W.D. 1991); 972 F.2d 1340 (9th Cir. 1992)); *see also*
3 *Blackwell*, 120 Wn.2d at 830.

- 4 ii. The claim related to the victims' counseling
5 records should be rejected.

6 A sexual assault victim's counseling records are subject to a qualified privilege by
7 statute. *Gregory*, 158 Wn.2d at 792 (citing RCW 70.125.065; *Kalakosky*, 121 Wn.2d at 550).
8 Before a rape victim's privacy should be invaded by a review the defendant must make a
9 particularized showing the records are likely to contain material relevant to the defense. *Id.* A
10 claim that privileged files might lead to other evidence or may contain information critical to
11 the defense is not sufficient to compel a court to disclose them following *in camera* review. *See*
12 *Gregory*, 158 Wn.2d at 795 (citing *Diemel*, 81 Wn.App. 469).

13 This claim was previously determined to be too inadequately supported to enable
14 review. App. B. at 20. It finds no greater support in the PRP. Petitioner cites to his own motion
15 to compel, and Judge Felnagle's order requesting the requested records, yet neither document
16 evinces whether records were ever produced, or reviewed by the court. A Clerk's Minute entry
17 of November 30, 2009, indicates the court actually ruled in petitioner's favor by ordering a
18 partial disclosure of the requested records while noting the absence of any objections to the
19 order sealing the remainder. App.I. Petitioner's unfounded claims should be dismissed.

20 3. PETITIONER'S FRIVOLOUS INEFFECTIVE ASSISTANCE AND
21 SPEEDY TRIAL CLAIMS ARE REFUTED BY THE RECORD.

- 22 a. The meritless ineffective assistance of counsel
23 claims should be dismissed.

24 Reviewing courts have "note[d], with increasing concern, that it seems to be standard
25 procedure for the accused to quarrel with court-appointed counsel, or to develop an undertone
of studied antagonism and claimed distrust, or to be reluctant to aid or cooperate in preparation
of a defense. This appears to be done in order to argue on appeal that the accused was deprived

1 due process alleging he was represented by incompetent counsel." *Stenson*, 142 Wn.2d at 734
2 (quoting *State v. Piche*, 71 Wn.2d 583, 589, 430 P.2d 522 (1976); *State v. Keller*, 65 Wn.2d
3 907, 908, 400 P.2d 370(1965)).

- 4 i. Petitioner's unwarranted criticism of trial
5 counsel does not prove ineffective
6 assistance.

7 A claim of ineffective assistance of trial counsel cannot prevail unless a petitioner
8 demonstrates he was prejudiced by a proven deficiency. *In re Crace*, 174 Wn.2d 835, 846-47,
9 280 P.3d 1102 (2012); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80
10 L.Ed.2d 674 (1984); *State v. Nichols*, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007). "Deficient
11 performance" falls below an objective standard of reasonableness under the circumstances.
12 *State v. McFarland*, 127 Wn.2d 322, 334-35, 889 P.2d 1251 (1995). A petitioner cannot prove
13 deficient performance without overcoming the strong presumption of counsel's effectiveness.
14 *Nichols*, 161 Wn.2d at 8; *McFarland*, 127 Wn.2d at 335; *Strickland*, 466 U.S. at 689.
15 "Prejudice" cannot be proved unless there is a reasonable probability the outcome of the
16 proceeding would have been different but for the proven deficiency. *Id.* (citing *State v.*
17 *Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004); *State v. Foster*, 140 Wn. App. 266,
18 273, 166 P.3d 726 (2007)).

19 Reasonable strategic and tactical decisions will not support an ineffective assistance
20 claim regardless of the outcome achieved for criminal defendants are not guaranteed successful
21 assistance of counsel. *Reichenbach*, 153 Wn.2d at 130; *Strickland*, 466 U.S. at 689-91; *State*
22 *v. Dow*, 162 Wn. App. 324, 336, 253 P.3d 476 (2011) (citing *State v. Adams*, 91 Wn.2d 86, 90,
23 586 P.2d 1168 (1978); see also *Lockhart v. Fretwell*, 506 U.S. 364, 369-70, 113 S. Ct. 838,
24 122 L.Ed.2d 180 (1993); *State v. Grier*, 171 Wn.2d 17, 43, 246 P.3d 1260 (2011). Ineffective
25 assistance is likewise incapable of being established based on counsel's refusal to pursue

1 strategies reasonably unlikely to succeed. *State v. Brown*, 159 Wn. App. 366, 371, 245 P.3d
2 776 (2011)(citing *McFarland*, 127 Wn.2d at 334 n.2).

3 Petitioner wrongly claims trial counsel was ineffective because the trial court denied her
4 reasonable efforts to re-interview the juvenile victims. PRP 45-46, 48; *Brown*, 159 Wn. App. at
5 371. The alleged prejudice flowing from the court's rulings, *i.e.*, that counsel could not know
6 what "the [S]tate thinks [petitioner] did" is simply false. PRP 46. The facts underling the drug
7 charges were clearly detailed in the probable cause declaration filed approximately one year
8 before the juveniles' depositions were taken. App. G, J. A more detailed recitation of those facts
9 was presented in the Bill of Particulars filed over two months before trial. App.J. Trial counsel
10 also had access to the deposition transcripts. *See* PRP App. H, H(1). There is no proof the
11 victims testimony materially changed between the depositions and trial, and even the existence
12 of proven discrepancies would not support the reversal petitioner requests. *See In re Stenson*,
13 142 Wn.2d at 754-55. Petitioner also received legal notice of the charges through the Amended
14 Information. App. D.

15 Petitioner's claim counsel failed to "renew" her motion to excuse a challenged venire
16 member suffers from the same infirmity by calling counsel ineffective for failing to persuade
17 the trial court to grant her motion. PRP 47. The record is devoid of proven prejudice flowing
18 from the court's denial of counsel's motion as it does not establish a bias juror was seated. PRP
19 47; *see e.g., State v. Clark*, 143 Wn.2d 731, 762, 24 P.3d 1006 (2001); *State v. Fire*, 145
20 Wn.2d 152, 165, 34 P.3d 1218 (2001). Ineffective assistance has not been shown.

21
22 ii. Petitioner's unwarranted criticism of his
23 appellate counsel is similarly incapable of
establishing ineffective assistance.

24 A defendant has no right to counsel for a frivolous appeal. *State v. Wade*, 133 Wn. App.
25 855, 863, 138 P.3d 168 (2006)(citing *Evitts v. Lucey*, 469 U.S. 387, 394, 105 S.Ct. 830, 83
L.Ed.2d 821 (1985); *State v. Hairston*, 133 Wn.2d 534, 537 n.2, 946 P.2d 397 (1997)). An

1 attorney need not advance every argument urged by the appellant regardless of merit. *Jones v.*
2 *Barnes*, 463 U.S. 745, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983). To prevail on a claim of
3 ineffective appellate counsel, a petitioner must prove that a legal issue counsel failed to raise or
4 perfect had merit and petitioner was actually prejudiced by the failure. See *In re Dalluge*, 152
5 Wn.2d 772, 787, 100 P.3d 279 (2004). However, failure to raise or perfect all possible
6 nonfrivolous issues on appeal is not ineffective assistance. The exercise of independent
7 judgment in deciding what issues may lead to success is at the heart of an attorney's role. *Id.*
8 The typical remedy for ineffective assistance of appellate counsel is reinstatement of the appeal.
9 *In re Frampton*, 45 Wn. App. 554, 563, 726 P.2d 486 (1986).

10 Petitioner erroneously characterizes appellate counsel as deficient for allegedly failing to
11 assign error to the findings of sexual motivation and for providing him something less than all
12 the records in his case. PRP 48-50. The first allegation reflects a complete lack of appreciation
13 for the arguments counsel made on his behalf. She attacked the sexual motivation finding by
14 challenging: (1) the sufficiency of the evidence; (2) the findings as inconsistent with the rape
15 acquittals; and (3) the form of the special verdict instruction. App.B. Petitioner's
16 misconceptions about the case are further exposed through his expressed belief he received
17 "168 months for 0.1 grams of marijuana." PRP 49. His justly imposed sentence was predicated
18 on the determination he delivered marijuana to two juveniles with sexual motivation and had
19 them sell marijuana for him nearly everyday after school from March 1, 2008, and June 4, 2008.
20 App.B, D.

21 Petitioner's second claim is no less meritless as neither his constitutional right to due
22 process nor his right to effective appellate counsel were violated by counsel's alleged failure to
23 provide him some number of yet to be specifically identified records purportedly relevant to his
24 statement of additional grounds. A record of sufficient completeness does not necessarily mean
25 the entire trial record. See *State v. Thomas*, 70 Wn. App. 296, 298-99, 852 P.2d 1130 (1993);

1 *Mayer v. City of Chicago*, 404 U.S. 189, 194, 92 S. Ct. 410, 30 L. Ed. 2d 372 (1971). Petitioner
2 mistakenly maintains counsel provided an incomplete record because she did not ask the public
3 to purchase a transcript of every proceeding or arrange the transfer of every filing regardless of
4 relevance. Counsel was charged with representing him without abusing judicial process through
5 wasteful requests. *See* CR 11;¹² RAP 9.2; RAP 9.6(a).

6 The claims petitioner identifies as lacking a record necessary for review were filed in his
7 *pro se* statement of additional grounds. PRP 29. A litigant proceeding *pro se* must comply with
8 all procedural rules. *In re Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Whatever
9 portions of the record petitioner claims he was deprived—if they exist—are the portions he
10 apparently neglected to request directly or through counsel. *See* RAP 10.10(c); RAP 9.2(c)¹³;
11 RAP 9.6(a)¹⁴. The mail correspondence attached to the PRP demonstrates petitioner's failure to
12 distinguish the trial record, which could be legitimately cited on direct appeal, from materials
13 ostensibly present in the case file, yet outside the trial record, which could only be legitimately
14 presented through a PRP. The contention appellate counsel was unwilling to assist him is
15 proven false by his own exhibits. *See* PRP App.A (9/23/11 Letter)¹⁵;(2/8/12 Letter)¹⁶; (11/29/13

16
17 ¹² Petitioner's appellate counsel attempted to explain as much to petitioner in her letter of October 9, 2012: "Again,
18 I chose to raise the issues on appeal that I believe, in my professional opinion, to be the strongest and the likeliest
19 to prevail in the Court of Appeals. It is a decision of legal strategy, and one that I do not make lightly. You have
20 chosen to emphasize different issues for review in your Statement of Additional Grounds—such as ineffective
21 assistance of counsel, speedy trial, and the right to be present, for example—which I do not believe present as strong
22 a chance of reversal. I hope that you respect the strategic decisions I have made, and know that I am working hard
23 on your case." PRP App. A.

24 ¹³ RAP 9.2(c) "[A]ny other party who wishes to add to the verbatim report of proceedings should within 10 days
25 after service of the statement of arrangements file and serve on all other parties and the court reporter a designation
of additional parts of the verbatim report of proceedings...."

¹⁴ RAP 9.6(a) "Any party may supplement the designation of clerk's papers and exhibits prior to or with the filing of
the party's last brief. Thereafter, a party may supplement ... by order of the appellate court, upon motion."

¹⁵ 9/23/11 Letter: "I received your letter again requesting information about your transcripts. In answer to your
first question, it is not the sending of the transcripts [that] is taking a long time, it is that the actual transcribing is
taking a long time, presumably because of the court report's heavy workload ... Third, yes, we will get everything
that was filed in the in the trial court record ... our office ... has been working very diligently on your behalf...."

¹⁶ 2/8/12 Letter: "In an effort to support your speedy trial, you have asked for further records concerning the
continuances granted by the trial court. In furtherance of your request, I have arranged for the entire file to be sent
to you for your review. This contains all of the Clerk's Papers, which are indexed... If this further record requires
you to supplement your State of Additional Grounds, you may ask for an extension (or ask me to ask on your
behalf)... I do hope this is helpful to you...."

1 Letter)¹⁷; (1/31/14 Letter)¹⁸; (2/14/14 Letter)¹⁹ Counsel plainly did all that was required of her,
2 and more. *Id.* **Wade**, 133 Wn. App. at 867 (quoting **State v. Adams**, 91 Wn.2d 86, 91, 586 P.2d
3 1168). And even proof of isolated error amid otherwise constitutionally effective representation
4 could not support the ineffective counsel claim.

5 Petitioner failed to demonstrate any prejudice associated with the alleged failure to
6 perfect the record. Nothing before the Court shows the ostensibly omitted record would have
7 affected the outcome of the direct appeal. See **Frampton**, 45 Wn. App. at 559.

8 He is also mistaken about the remedies available through collateral attack. The remedy
9 for a constitutional failure of appellate right is reinstatement of the appeal, not reversal of the
10 underlying convictions. *Id.* at 559, 562. And his request for economic sanctions to be imposed
11 on the appellate counsel who so diligently labored to assist him is as unfortunate as it is
12 incapable of being granted in a PRP. See **In re Williams**, 171 Wn.2d 253, 256, 250 P.3d 112
13 (2011) (citing see **In re Sappenfield**, 138 Wn.2d 588, 595, 980 P.2d 1271 (1999)).

14 b. The meritless time for trial claims should fail.

15 i. Petitioner failed to prove a miscarriage of
16 justice resulted from a violation of his
CrR 3.3 time for trial right.

17 An incarcerated defendant does not have a constitutional right to a trial date within sixty
18 days of his arraignment. See CrR 3.3; U.S. Const. amend 6; Const. art 1, § 22 (amend. 10); **State**
19

20 ¹⁷ 11/29/13 Letter: "Here is a clean copy of the declaration ... An affidavit from me affirming my conversation with
21 your trial counsel ...I have also included a one-page document that I found in your file ... I hope these documents
assist you in some way. Please feel free to contact me if I can be of further assistance...."

22 ¹⁸ 1/31/14 Letter: "[Y]ou have asked for several things...we do not have the first several items in our office, because
they were not part of the record on appeal. This is because only things that occurred ...on the record in the trial
court...become part of the record on appeal...As to your last request ... for 'all of my records'-I'm not sure what you
23 mean by that Are you asking for a copy of my file? If so, I have done this before-about two years ago... If there are
still items you seek, but don't have, you may want to file a Freedom of Information Act request. I have enclosed a
sample form ... You may be able to request interviews...Let me know if there's anything else I can do for you."

24 ¹⁹ 2/14/14 Letter: "[I] have again followed up with Jane Pierson's office ... I ... requested copies of all police reports
and motion practice, so ... I can send them all to you ... for the preparation of your PRP ... If they give them to me
25 on a disc, I will have them printed out so that you can assess them more easily at your facility... Let me know if
there's anything else I can do for you"

1 *v. Fadebo*, 113 Wn.2d 388, 393, 779 P.2d 707 (1989); *State v. White*, 94 Wn.2d 498, 501, 617
2 P.2d 998 (1980). And even CrR 3.3 does not require an incarcerated defendant to be tried within
3 60 days if time has been properly excluded by the court. CrR 3.3(b)(1)(i),(e). Continuances may
4 be granted upon written agreement, or when they are required in the administration of justice
5 and will not prejudice the defense. CrR 3.3 (f)(1),(2). The phrase "administration of justice" is
6 not limited to the administration of justice in a single case evaluated in isolation. *State v.*
7 *Angulo*, 69 Wn. App. 337, 343, 848 P.2d 1276 (1993). Defense counsel is empowered to make
8 binding requests for CrR 3.3 continuances over the defendant's objection. CrR 3.3(f)(2); *State v.*
9 *Olliver*, 178 Wn.2d 813,825, 312 P.3d 1 (2013).

11 A trial court's decision to grant a continuance will not be disturbed absent an abuse of
12 discretion. *State v. Olliver*, 178 Wn.2d 813,825, 312 P.3d 1 (2013). "Allowing counsel time to
13 prepare for trial is a valid basis for a continuance." *State v. Flinn*, 154 Wn.2d 193, 200, 110
14 P.3d 748 (2005); *see also State v. Williams*, 104 Wn. App. 516, 523, 17 P.3d 648 (2001)(citing
15 *State v. Campbell*, 103 Wn.2d 1, 15, 691 P.2d 929 (1984)). "Scheduling conflicts may [also] be
16 considered in granting continuances." *Flinn*, 154 Wn.2d at 200 (citing *State v. Heredia-Juarez*,
17 199 Wn. App. 150, 153-155, 79 P.3d 987 (2003)); *see also State v. Carson*, 128 Wn.2d 805, 912
18 P.2d 805, 912 P.2d 1016 (1996); *State v. Palmer*, 38 Wn. App. 160, 162, 684 P.2d 787 (1984);
19 *State v. Krause*, 82 Wn. App. 688, 689, 919 P.2d 123 (1996); *State v. Kelly*, 64 Wn. App. 755-
20 67, 828 P.2d 1106 (1992)²⁰ Granting a continuance over a defendant's objection because the
21 assigned deputy prosecutor is engaged in another trial or to ensure defense counsel is adequately
22

24 ²⁰ "Deputy prosecutors, particularly those in ... heavily populated counties, are required to try cases back to back,
25 day after day, and month after month, and year after year. It is not humanly possible to work under this kind of
pressure and stress, for months and years at a time, without extended vacation ... [T]o deprive deputy prosecutors
of the dignity they deserve ... would result eventually ... in less effective justice as well as in unfairness in the
administration of justice." *Kelly*, 64 Wn. App. at 755-67. No less is true of public defenders. *See Id.*

1 prepared is not an abuse of discretion. *Olliver*, 178 Wn.2d at 824, n.2 (citing *State v. Campbell*,
2 103 Wn.2d 1, 15, 691 P.2d 929 (1984); see *State v. Finch*, 137 Wn.2d 792, 806, 975 P.2d 967
3 (1999)). The unavailability of material witnesses is an equally valid reason for a continuance.
4 *State v. Iniguez*, 167 Wn.2d 273, 294, 217 P.3d 768 (2009).

5 Defendant challenges seven pretrial continuances granted by the trial court. PRP 41-43.

6 A summary of the valid justifications for each is provided below:

7
8 1. **4/14/09:** Granted upon agreement of counsel over defendant's objection because
9 the assigned DPA was in trial, counsel needed time to prepare pursuant to *State v.*
10 *Cambell*, and forensic interviews were pending. App.K.²¹

11 2. **6/11/09:** Granted upon agreement of counsel over defendant's objection because
12 the State's counsel had CLE²² training the week of June 15th; a material witness
13 ("victim") was out of state for the first two weeks of July and defense needed interviews
14 as well as criminal history for State's witnesses. *Id.*

15 3. **12/2/09:**²³ Granted upon agreement of counsel over defendant's objection because
16 newly assigned defense counsel needed time to prepare for trial. *Id.*

17 4. **2/11/10:** Granted in the administration of justice over defendant's objection with a
18 finding defendant would not be prejudiced because one of the two juvenile
19 victims was out of the country and would not return until March 7th. *Id.*

20 5. **9/7/10:** Granted by the court for administrative necessity due to the unavailability
21 of courtrooms. A note communicating defendant's objection stricken by line with
22 defendant's name signed in the right margin. *Id.*

23 6. **9/8/10:** Granted in the administration of justice over defendant's objection with a
24 finding defendant would not be prejudiced as well as for administrative
25 necessity as there were no courtrooms available "that c[ould] accommodate th[e] trial
before defense counsel bec[a]m[e] unavailable (on 9-24-10)." *Id.* Time for trial was
adjusted to 28 days, which would reflect time counting down rather than being
excluded for the September 7, 2010, courtroom-congestion continuance. *See Id.*

²¹ Due to the number of orders they will be chronologically assembled in Appendix K.

²² Continuing Legal Education.

²³ Petitioner's brief makes reference to a continuance granted "December 3, 2009"; however, his exhibit shows the date to be "December 2, 2009". PRP Ex.E (emphasis added). December 3rd would have been the scheduled trial date had the December 2nd continuance been denied.

1 **7. 9/9/10:** Granted upon agreement of counsel, and defendant, because defendant
2 exercised an affidavit of prejudice as to Dept. 9 after being assigned out for trial and
3 there were no other judicial departments able to preside over a two week
4 trial before defense counsel became unavailable between September 25, 2010, and
5 October 31, 2010, due to vacation and furlough. *Id.*

6 Petitioner failed to establish any of the rule based continuances amounted to
7 nonconstitutional error that resulted in a miscarriage of justice. All but the court congestion
8 continuance were supported by legitimate grounds to exclude time for trial. They allowed the
9 case to adjust to reasonable scheduling conflicts brought about by competing trial assignments,
10 CLE training, material witnesses unavailability, trial preparation, and vacations. Petitioner's
11 periodic objections did not undermine the validity of corresponding continuances as he was
12 bound by counsel's reasonable requests. *Olliver*, 178 Wn.2d at 824. "[A] contrary conclusion
13 would encourage objections ...for, "if defense counsel c[ould] seek continuances for any purpose
14 and at the same time the defendant c[ould] file effective objections—a nearly automatic escape
15 hatch would be created should the trial not proceed as hoped." *Id.* at 839.

16 For the same reasons prejudice cannot be proved. Counsel plainly agreed to the
17 challenged continuances either to advance petitioner's interests through preparation or to
18 accommodate scheduled leave. Although some of the corresponding orders did not explicitly
19 rely on CrR 3.3 (f)(2)'s administration of justice exception; sufficiently implicit in each order's
20 explanatory note was the need to accommodate an interest well established to further the
21 administration of justice in a way that did not prejudice the defense. *See Oliver*, 178 Wn.2d at
22 824.

23 Petitioner's challenge to court congestion continuance is no less frivolous as time for trial
24 was not excluded for that continuance, and twenty eight days for trial remained after that
25 continuance. *See App. K (9/8.10)*. Courts are plainly authorized to allocate available resources

1 according to need within the confines of the time for trial rule. See CrR 3.3; *State v. Warren*, 96
2 Wn. App. 306, 309, 979 P.2d 915 (1999).

- 3 ii. Petitioner likewise failed to prove a
4 violation of his speedy trial right.

5 The constitutional speedy trial right²⁴ is consistent with delays and subject to
6 circumstances. *Olliver*, 178 Wn.2d at 826 (citing *Barker v. Wingo*, 407 U.S. 514, 522, 92 S.
7 Ct. 2182, 33 L. Ed. 2d 101 (1972)). "[T]he right is not quantified, does not depend upon
8 whether the defendant makes a specific request, and does not arise pursuant to some inflexible
9 rule. *Id.* (citing *Barker*, 407 U.S. at 522-25). Reviewing courts employ *de novo* review through
10 the *Barker* balancing test to determine whether a constitutional violation occurred. *Id.* at 826-
11 27 (citing *Iniguez*, 167 Wn.2d at 292). The test weighs the conduct of the prosecution and
12 defendant according to four nonexclusive factors: (1) length of delay; (2) reason for the delay;
13 (3) the defendant's assertion of the right, and prejudice to the defendant. *Id.* (citing *Baker*, 407
14 U.S. at 529-31). No factor is sufficient or necessary to a violation; however, they assist in
15 determining whether the speedy trial right was honored. *Id.*

17 A speedy trial analysis is unwarranted given the absence of
18 presumptive delay under the particular circumstances of this case.

19 As a preliminary matter, a reviewing court confronted with a speedy trial claim must
20 determine whether the delay is sufficiently lengthy to trigger judicial examination. *Olliver*, 178
21 Wn.2d at 827-28. A more than eight year delay was found sufficient to trigger a speedy trial

25 ²⁴ The analysis for speedy trial rights under article I, section 22 is substantially the same as the Sixth Amendment
analysis, and the state provision does not afford greater rights to a defendant. *Olliver*, 178 Wn.2d at 826 (citing
Iniguez, 167 Wn.2d at 289).

1 inquiry in *Dogget v. United States*, 505 U.S. 647, 651, 112 S. Ct. 2686, 120 L. Ed. 2d 520
2 (1992). Washington's Supreme Court found the analysis triggered²⁵ where an eight-month
3 delay was substantial in relation to charges that were not complex. *Olliver*, 178 Wn.2d at 828
4 (citing *Iniguez, supra*).

5 The approximately two year, seven month, delay in petitioner's case does not trigger
6 application of the *Baker* test. Different from *Iniguez*, petitioner's case was extremely complex.
7 It required the parties to address eight counts with two aggravating factors. App.D. Underlying
8 the array of changes was petitioner's daily employment of two juvenile victims in sexually
9 motivated drug transactions from March to early June 2008. App.B. at 2-3. The complexity was
10 compounded by discovery issues associated with petitioner's attempt to acquire the juveniles
11 confidential records. PRP App.A (RP 6); App. I, K. Extensive pretrial motions prolonged the
12 case; as did the time required for each of petitioner's four successive attorneys to prepare. *Id.*

13
14 The speedy trial claim also fails for the delay was not exceptional.

15 As was the case in *Olliver*, "numerous ... courts have not regarded delay as exceptionally
16 long where the delay was as long or longer than here, particularly when the delay was
17 attributable to the defense. 178 Wn.2d 828-29 (citing e.g., *United States v. Lane*, 561 F.2d 1075
18 (2d. Cir. 1977)(58 months); *United States v. Porchay*, 651 F.3d 930, 940 (8th Cir. 2011)(39
19 months).

20 The justifications for each continuance are summarized below:

21 **1. 6/30/08:** Upon agreement for additional time to negotiate and accommodate
22 DPA leave. App.K.

23
24
25 ²⁵ "Presumptively prejudicial" has been used to describe a *Barker* analysis triggering delay; however, such a finding only means that speedy trial review is proper; it does dictate the result of the fourth *Barker* factor once the analysis proceeds. *Dogget*, 505 U.S. at 652; *United States v. Colombo*, 852 F.2d 19, 24 (1st Cir. 1988).

- 1 **2. 9/4/08:** Required in administration of justice to continue negotiations for possible
2 plea; defendant will not be prejudiced. *Id.*
- 3 **3. 10/2/08:** Upon agreement; "[d]efense needs time to prepare for trial". *Id.*
- 4 **4. 10/30/08:** Upon defendant's request and agreement to accommodate newly assigned
5 defense counsel. *Id.*
- 6 **5. 1/15/09:** Upon defendant's request and agreement to facilitate "extensive
7 investigation". *Id.*
- 8 **6. 4/14/09:** Upon agreement over defendant's objection because the assigned DPA
9 was in trial, outstanding discovery, and defense requires more time to prepare. *Id.*
- 10 **7. 6/11/09:** Upon agreement over defendant's objection to accommodate DPA and
11 material witness (victim) unavailability as well as defense interviews. *Id.*
- 12 **8. 8/11/09:** Upon agreement on defendant's request. Case identified as a "very
13 complex child rape case" with 20+ witnesses; additional investigation required
14 with "extensive" motions *in limine* anticipated. *Id.*
- 15 **9. 10/29/09:** Upon agreement on defense counsel's request over defendant's objection
16 because defense needed to draft motions *in limine* for "complex child rape case" and
17 to complete investigation. DPA in an interpreter trial. *Id.*
- 18 **11. 12/2/09:** Upon agreement over defendant's objection to accommodate newly
19 assigned defense counsel's need to prepare for trial. *Id.*
- 20 **12. 2/11/10:** Required in the administration of justice because one of the two material
21 juvenile victims was out of the country; defendant will not be prejudiced. *Id.*
- 22 **13. 2/24/10:** Required in the administration of justice on defendant's motion requesting
23 time to obtain defendant's case file from prior defense counsel then prepare for trial;
24 defendant will not be prejudiced. *Id.*
- 25 **14. 4/13/10:** Required in the administration of justice and upon agreement over
26 defendant's objection to facilitate the defense request for more time to prepare;
27 defendant will not be prejudiced. *Id.*
- 28 **15. 7/12/10:** Required in the administration of justice on defense counsel's request,
29 identifying herself as defendant's "5th def. atty on the case" still reviewing former
30 counsel's work and believes additional investigation will be necessary.²⁶ *Id.*

²⁶ The record is unclear as to whether defendant had 4 or 5 defense attorneys over the course of his case. Relevant Clerk's papers indicate 4 is more likely the correct number.

1 **16. 8/27/10:** Required in the administration of justice on defense motion over
2 defendant's objection to provide defense counsel additional time to prepare;
3 defendant will not be prejudiced. *Id.*

4 **17. 9/7/10:** Administrative necessity due to the absence of available courtrooms. *Id.*

5 **18. 9/8/10:** Required in the administration of justice based on the absence of
6 courtrooms able to accommodate defense counsel's scheduled unavailability. *Id.*

7 **19. 9/9/10:** Upon agreement on defendant's motion based on the absence of
8 courtrooms able to accommodate defense counsel's schedule after defendant exercised
9 affidavit of prejudice against a judicial department able to preside over his trial. *Id.*

10 **20. 11/17/10:** Upon agreement over defendant's objection due to defense counsel's
11 unavailability as well as the absence of jurors. *Id.*

12 The delay was based on legitimate reasons predominately attributable to the defense.
13 Since none of the delay was brought about by governmental misconduct or negligence, it cannot
14 be blamed on the State.

15 The delays were predominately purposed to enable defense trial
16 preparation, accommodate defense counsel, or to address
17 circumstances beyond the State's control.

18 "[T]he United States Supreme Court reminds [reviewing courts] that pretrial delay is
19 often both inevitable and wholly justifiable." *Olliver*, 178 Wn.2d at 831 (*citing Doggett*, 505
20 U.S. at 656). "[C]areful assessment of the reasons for the delay is [therefore] necessary to sort
21 the legitimate or neutral reasons for delay from improper reasons. A court looks to each party's
22 responsibility for the delay, primarily related to blameworthiness and the impact of the delay
23 on the defendant's right to a fair trial. *Id.* (*citing Barker*, 407 U.S. at 531). "At one end of the
24 spectrum is the situation where the defendant requests or agrees to the delay and is therefore ...
25 deemed to have waived speedy trial rights as long as the waiver is knowing and voluntary." *Id.*
 (*citing Iniquez*, 167 Wn.2d at 284; *Barker*, 407 U.S. at 529). "At the other end of the spectrum,
 if the government deliberately delays the trial to frustrate the defense, this conduct will be

1 weighted heavily against the State." *Id.* at 832 (citing **Barker**, 407 U.S. at 531). "Moving more
2 toward the center, if the delay is due to the government's negligence or overcrowded courts, the
3 delay is still weighed against the government, but to a lesser extent." *Id.* "[I]f the government
4 has a valid reason for the delay, such as a missing witness, then the valid reason may justify a
5 reasonable delay." *Id.*

6 All of the continuances were granted for reasons recognized to advance the interests of
7 justice. The delays predominately accommodated the defense. The only continuances granted
8 in part to accommodate the State were grounded in its legitimate need to ensure the presence of
9 material witnesses, attend necessary training, or take scheduled leave. Petitioner's periodic
10 opposition to the delay will not support a speedy trial violation since delays caused by his
11 counsel are charged against him. **Olliver**, 178 Wn.2d at 833 (citing **Vermont v. Brillon**, 556
12 U.S. 81, 89- 129 S. Ct. 1283, 173 L. Ed. 2d 231 (2009); **Coleman v. Thompson**, 501 U.S. 722,
13 753, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991); **County v. Dodson**, 454 U.S. 312, 318, 102
14 S.Ct. 445, 70 L. Ed. 2d 509 (1981)).

15
16 Petitioner attempts to avoid that result by wrongly blaming the State for his uncanny
17 succession of trial counsel, yet the State is not responsible for his first lawyer's undisclosed
18 conflict, his second lawyer's office closure, or his third lawyer's withdraw due to the conflict
19 petitioner created by filing a bar complaint against him. App. L. Nor can the State be held
20 accountable for the delay brought about by petitioner's decision to file an affidavit of prejudice
21 against the first judge assigned to preside over his trial. *Id.*

22
23 Petitioner is bound by the reasonable continuances requested by his
24 counsel.

25 Reasonable continuances requested by a defendant's counsel over the defendant's
objection are charged against the defendant, tipping the balancing in favor of the State. **Olliver**,

1 178 Wn.2d at 837-40. Each of petitioner's four successive counsel were responsible for
2 investigating facts and identifying legal arguments relevant to the preparation of the defense
3 while his case was under their respective care. Petitioner cannot reasonably expect to rely on
4 continuances principally requested to ensure he received constitutionally effective counsel as a
5 basis to overturn his convictions. See *Oliver*, 178 Wn.2d at 839.

6 Petitioner failed to prove the delay prejudiced his case.

7 "Under the forth factor, prejudice ... may consist of (1) oppressive pretrial
8 incarceration, (2) anxiety and concern of the accused, and (3) the possibility that the ... defense
9 will be impaired by dimming memories and loss of exculpatory evidence." *Olliver*, 178 Wn.2d
10 at 840 (citing *Doggett*, 505 U.S. at 654; *Barker*, 407 U.S. at 532). "When the government
11 prosecutes a case with reasonable diligence, a defendant who cannot demonstrate how his
12 defense was prejudiced with specificity will not make out a speedy trial claim no matter how
13 great the ensuing delay." *Id.* at 841 (citing *Doggett*, 505 U.S. at 656).

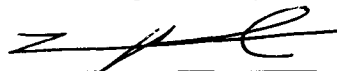
14
15 Petitioner has not proved he was prejudiced by delay that principally advantaged the
16 defense. See *Olliver*, 178 Wn.2d at 844.

17 D. CONCLUSION

18 This petition should be dismissed as successive, inadequately supported and meritless.

19 RESPECTFULLY SUBMITTED: July 3rd, 2014.

20 MARK LINDQUIST
21 Pierce County
22 Prosecuting Attorney

23 

24 JASON RUYF
25 Deputy Prosecuting Attorney
WSB #38725

1 Certificate of Service:

2 The undersigned certifies that on this day she delivered by U.S. mail
3 to petitioner true and correct copies of the document to which this
certificate is attached. This statement is certified to be true and
correct under penalty of perjury of the laws of the State of Washington.

4 Signed at Tacoma, Washington, on the date below.

5 7.3.14 Therent
Date Signature

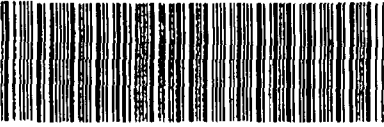
APPENDIX “A”

Judgment and Sentence

Case Number: 08-1-02916-8 Date: June 24, 2014

SerialID: CEA905FD-F20F-6452-DFA8C007A6A7AEE3

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 36074408 JDSWCD 03-21-11

FILED
DEPT. 14
IN OPEN COURT

MAR 18 2011

Pierce County Clerk

By.....
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 08-1-02916-8

vs.

JEFFREY LAMONT RANDALL,

Defendant.

WARRANT OF COMMITMENT

- 1) ☐ County Jail
2) ☒ Dept. of Corrections
3) ☐ Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto

1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

WARRANT OF
COMMITMENT -J

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

08-1-02916-8

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 3/18/2011

By direction of the Honorable

JUDGE

KEVIN STOCK

CLERK

By:

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

MAR 18 2011 Chris Hutton Deputy

STATE OF WASHINGTON

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

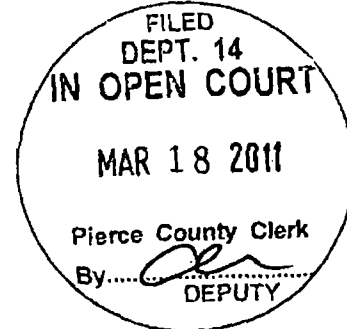
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

_____ day of _____.

KEVIN STOCK, Clerk

By: _____ Deputy

cw



Case Number: 08-1-02916-8 Date: June 24, 2014

SerialID: CEA905FD-F20F-6452-DFA8C007A6A7AEE3

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02916-8

FILED
DEPT. 14
IN OPEN COURT

MAR 18 2011

Pierce County Clerk
By... *[Signature]*
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-02916-8

NCO

vs.

JEFFREY LAMONT RANDALL

Defendant.

JUDGMENT AND SENTENCE (FJS)

☒ Prison ☐ RCW 9.94A.712 Prison Confinement☐ Jail One Year or Less☐ First-Time Offender☐ Special Sexual Offender Sentencing Alternative☐ Special Drug Offender Sentencing Alternative☐ Breaking The Cycle (BTC)☐ Clerk's Action Required, para 4.5(SDOSA) 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6
and 5.8

SID: WA14769592

DOB: 02/05/68

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 1/21/11
by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
V	INVOLVING A MINOR IN A TRANSACTION TO DELIVER A CONTROLLED SUBSTANCE, J84	69.50.4015	N/A	03/01/08-06/04/08	TPD 081340894
VI	INVOLVING A MINOR IN A TRANSACTION TO DELIVER A CONTROLLED SUBSTANCE, J84	69.50.4015	N/A	03/01/08-06/04/08	TPD 081340894

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 1 of 13Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

11-9-03213-3

08-1-02916-8

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
VII	DELIVERY OF A CONTROLLED SUBSTANCE TO A PERSON UNDER 18 YEARS OF AGE WITH SEXUAL MOTIVATION, J79	69.50.401 (1)(2)(a) 69.50.406(1) 9.94A.030 9.94A.835 9.94A.533	SM	03/01/08 - 06/04/08	TPD 081340894
VIII	DELIVERY OF A CONTROLLED SUBSTANCE TO A PERSON UNDER 18 YEARS OF AGE WITH SEXUAL MOTIVATION, J79	69.50.401 (1)(2)(a) 69.50.406(1) 9.94A.030 9.94A.835 9.94A.533	SM	03/01/08 - 06/04/08	TPD 081340894

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Third Amended Information

☒ [X] A special verdict/finding of sexual motivation was returned on Count(s) VII and VIII
RCW 9.94A.835.

☐ [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

☐ [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	Assault 2	05/18/90	King County WA	11/17/89	Adult	V
2	UPCS	03/08/93	King County WA	01/28/93	Adult	NV
3	UDCS W/ INT	10/10/96	Snohomish County WA	11/02/95	Adult	NV
4	UDCS W/ INT	10/10/96	Snohomish County WA	11/02/95	Adult	NV
5	UPCS	10/10/96	Snohomish County WA	11/02/95	Adult	NV
6	Assault 3	08/08/02	Pierce County WA	06/29/02	Adult	Misd
7	Unlawful Imprisonment	09/18/02	Pierce County WA	08/12/02	Adult	Misd
8	Assault	05/18/90	King County WA	11/17/89	Adult	Misd
9	NVOL	Unknown	Tukwila Municipal WA	02/11/94	Adult	Misd
10	NVOL	Unknown	Tukwila Municipal WA	02/21/94	Adult	Misd
11	NVOL	Unknown	Lynnwood Municipal WA	10/12/95	Adult	Misd
12	Assault	Unknown	Tacoma Municipal WA	08/02/04	Adult	Misd
13	Assault / DV	Unknown	Tacoma Municipal WA	03/05/05	Adult	Misd
14	Assault / DV	Unknown	Tacoma Municipal WA	09/27/05	Adult	Misd
15	VPO	04/25/07	Spokane County WA	08/06/06	Adult	Misd
16	UPFGL	Unknown	Tacoma Municipal WA	11/01/07	Adult	Misd
17	DWLS	Unknown	Tacoma Municipal WA	01/30/08	Adult	Misd

☐ [] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

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[X] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
V	10	III	100-120 Months	N/A	100-120 Months	5yrs/ \$10,000 10yrs/ \$20,000
VI	10	III	100-120 Months	N/A	100-120 Months	5yrs/ \$10,000 10yrs/ \$20,000
VII	12	III	100-120 Months	SM 18 Months or 2 years	118-138 Months or 124-144 months	10yrs/\$20,000 or 20yrs/\$40,000
VIII	12	III	100-120 Months	SM 18 Months or 2 years	118-138 Months or 124-144 months	10yrs/\$20,000 or 20yrs/\$40,000

2.4 [] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

[] within [] below the standard range for Count(s) _____.

[] above the standard range for Count(s) _____.

[] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[] Aggravating factors were [] stipulated by the defendant, [] found by the court after the defendant waived jury trial, [] found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. [] Jury's special interrogatory is attached. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

[] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows:

COUNT V: 120 MONTHS; COUNT VI: 120 MONTHS; COUNT VII: 120 MONTHS; COUNT VIII: 120 MONTHS. ALL STANDARD RANGE SENTENCE RUNS CONCURRENT TO EACH, BUT EACH MONTH ENHANCEMENT RUNS CONSECUTIVE TO BOTH STANDARD RANGE AND EACH OTHER, SO TOTAL TIME IN CUSTODY IS 120+12+12+12=156 MONTHS IN CUSTODY. NCO WITH VICTIMS H.T. AND V.N., PSYCHO SEXUAL EVALUATION. COMMUNITY CUSTODY ON COUNTS V AND VI IS 12 MONTHS. COMMUNITY CUSTODY ON COUNTS VII AND VIII IS THREE YEARS PURSUANT TO RCW 9.94A.701.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 ☐ The court DISMISSES Counts F, II, III and IV ☒ The defendant is found NOT GUILTY of Counts

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN	\$	Restitution to:	
	\$	Restitution to:	
		(Name and Address—address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$	500.00	Crime Victim assessment
DNA	\$	100.00	DNA Database Fee
PUB	\$	2,000.	Court-Appointed Attorney Fees and Defense Costs
FRC	\$	200.00	Criminal Filing Fee
PCM	\$		Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ Other Costs for:

\$ Other Costs for:

\$2,800.00 TOTAL

☒ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☒ shall be set by the prosecutor.

☐ is scheduled for

☐ RESTITUTION. Order Attached

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

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[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per CCO per month commencing per CCO. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse (name of electronic monitoring agency) at for the cost of pretrial electronic monitoring in the amount of \$.

4.2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT 11/17/92 2/20/93
The defendant shall not have contact with H.T. and V.N (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

☒ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 OTHER: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

Psycho-sexual eval
Child abusing behavior
Follow all conditions per CCO
Restitution by later order
Appendix F & H

08-1-02916-8

4.4a BOND IS HEREBY EXONERATED

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

120 months on Count V 120 months on Count VIII
120 months on Count VI _____ months on Count _____
120 months on Count VII _____ months on Count _____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

24 months on Count No VII _____ months on Count No _____
24 months on Count No VIII _____ months on Count No _____
 _____ months on Count No _____ months on Count No _____

Sentence enhancements in Counts VII + VIII shall run
☐ concurrent ☒ consecutive to each other.
 Sentence enhancements in Counts VII + VIII shall be served
☒ flat time ☐ subject to earned good time credit

* all On Counts the court applied "doubler" under 69.50.408, making the statutory maximum of Counts V + VI 120 mos. (10 years) and Counts VII + VIII 240 mos. (20 years).
 The combined incarceration and community custody time shall not exceed the statutory maximums

Actual number of months of total confinement ordered is: 168 months

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above e).

☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Total Time Imposed is 120 Months on Each Count,

Concurrent Plus 48 Months (24 mos. each), Counts VII + VIII, consecutive.

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

08-1-02916-8

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 1,002 days

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months,

Count _____ for _____ months,

Count _____ for _____ months,

☒ COMMUNITY CUSTODY is ordered as follows:

Count V for a range from: _____ to 12 Months,

Count VI for a range from: _____ to 12 Months,

Count VII for a range from: _____ to 36 Months,

Count VIII for a range from: _____ to 36 Months,

Count _____ for a range from: _____ to _____ Months,

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories, or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay

Case Number: 08-1-02916-8 Date: June 24, 2014
 SerialID: CEA905FD-F20F-6452-DFA8C007A6A7AEE3
 Certified By: Kevin Stock Pierce County Clerk, Washington

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supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☒ Defendant shall have no contact with: H.T. & V.N.

☒ Defendant shall remain ☒ within ☐ outside of a specified geographical boundary, to wit: per CCO

☐ Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))

☒ The defendant shall participate in the following crime-related treatment or counseling services: per CCO

☒ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

☐ mental health ☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions: per CCO, Appendix F + H

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: per CCO

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 ☐ WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

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V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

[] Defendant waives any right to be present at any restitution hearing (sign initials): _____.

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register at the time of your release and within three (3) business days from the time of release.

2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in

08-1-02916-8

1 this state

2
3 **3. Change of Residence Within State and Leaving the State:** If you change your residence within a
4 county, you must provide, by certified mail, with return receipt requested or in person signed written
5 notice of your change of residence to the sheriff within three (3) business days of moving. If you change
6 your residence to a new county within this state, you must register with that county sheriff within three (3)
7 business days of moving, and must, within three (3) business days provide, by certified mail, with return
8 receipt requested or in person, signed written notice of the change of address in the new county to the
9 county sheriff with whom you last registered. If you move out of Washington State, you must send written
10 notice within three (3) business days of moving to the county sheriff with whom you last registered in
11 Washington State.

12 **4. Additional Requirements Upon Moving to Another State:** If you move to another state, or if you
13 work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and
14 photograph with the new state within three (3) business days after establishing residence, or after beginning
15 to work, carry on a vocation, or attend school in the new state. You must also send written notice within
16 three (3) days of moving to the new state or to a foreign country to the county sheriff with whom you last
17 registered in Washington State.

18 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of**
19 **Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to
20 a public or private institution of higher education, you are required to notify the sheriff of the county of your
21 residence of your intent to attend the institution within three (3) business days prior to arriving at the
22 institution. If you become employed at a public or private institution of higher education, you are required to
23 notify the sheriff for the county of your residence of your employment by the institution within three (3)
24 business days prior to beginning to work at the institution. If your enrollment or employment at a public or
25 private institution of higher education is terminated, you are required to notify the sheriff for the county of
26 your residence of your termination of enrollment or employment within three (3) business days of such
27 termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or
28 chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to
attend the school. You must notify the sheriff within three (3) business days prior to arriving at the school to
attend classes. The sheriff shall promptly notify the principal of the school.

6. **Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed
residence, you are required to register. Registration must occur within three (3) business days of release in
the county where you are being supervised if you do not have a residence at the time of your release from
custody. Within three (3) business days after losing your fixed residence, you must provide signed written
notice to the sheriff of the county where you last registered. If you enter a different county and stay there
for more than 24 hours, you will be required to register in the new county within three (3) business days
after entering the new county. You must also report weekly in person to the sheriff of the county where
you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall
occur during normal business hours. You may be required to provide a list the locations where you have
stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in
determining an offender's risk level and shall make the offender subject to disclosure of information to the
public at large pursuant to RCW 4.24.550.

7. **Application for a Name Change:** If you apply for a name change, you must submit a copy of the
application to the county sheriff of the county of your residence and to the state patrol not fewer than five
days before the entry of an order granting the name change. If you receive an order changing your name,
you must submit a copy of the order to the county sheriff of the county of your residence and to the state
patrol within three (3) business days of the entry of the order. RCW 9A.44.130(7).

[X] The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used.
The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of
Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

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5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.362.

5.10 OTHER: Any conditions per CCO & conditions set forth
on Appendix F

DONE in Open Court and in the presence of the defendant this date: 3/18/11

JUDGE

Print name:

SUSAN K. SERKO

Deputy Prosecuting Attorney

Print name:

KARA SANCHEZ

WSB # 35502

Attorney for Defendant

Print name:

Jane Pison

WSB #

23005

Defendant

Print name:

Jeffrey L. Raulbell

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. IF I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050, or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature:

FILED
DEPT. 14
IN OPEN COURT

MAR 18 2011

Pierce County Clerk

By: [Signature]
DEPUTY

08-1-02916-8

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 08-1-02916-8

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER
LANRE G. ADEBAYC

 Court Reporter

08-1-02916-8

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- ☒ sex offense
☒ serious violent offense
☐ assault in the second degree
☐ any crime where the defendant or an accomplice was armed with a deadly weapon
☐ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

☒ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____

_____ per CCO

☒ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

_____ H.T. + V.N.

☒ (III) The offender shall participate in crime-related treatment or counseling services *psycho-sex*

☒ (IV) The offender shall not consume alcohol; _____

☒ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

☒ (VI) The offender shall comply with any crime-related prohibitions

☒ (VII) Other: *per CCO*

Case Number: 08-1-02916-8 Date: June 24, 2014

SerialID: CEA905FD-F20F-6452-DFA8C007A6A7AEE3

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02916-8

IDENTIFICATION OF DEFENDANT

FILED
DEPT. 14
IN OPEN COURT

MAR 18 2011

Pierce County Clerk
By: *[Signature]*
DEPUTYSID No. WA14769592
(If no SID take fingerprint card for State Patrol)

Date of Birth 02/05/68

FBI No. 327805LA9

Local ID No. UNKNOWN

PCN No. UNKNOWN

Other

Alias name, SSN, DOB: _____

Race:					Ethnicity:		Sex:
<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African- American	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male			
<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :	<input checked="" type="checkbox"/> Non- Hispanic	<input type="checkbox"/> Female				

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb



Right Thumb

Right four fingers taken simultaneously

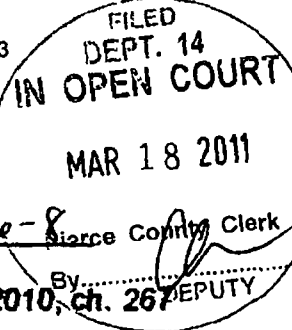


I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk

Dated: 3/18/11

DEFENDANT'S SIGNATURE: *[Signature]*

DEFENDANT'S ADDRESS: _____



Case Name Jeffrey Randall Cause No. 08-1-02916-8 Pierce County Clerk

Sex and Kidnapping Offender Registration. RCW 9A.44.130, Laws of 2010, ch. 267 § 1, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in Laws of 2010, ch. 267 § 1, you are required to register.

If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

2. Offenders Who are New Residents or Returning Washington Residents: If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. Change of Residence Within State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

4. Leaving the State or Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the state, you must also send written notice

DEPT. 14
IN OPEN COURT

MAR 18 2011

Pierce County Clerk
By: [Signature]
DEPUTY

within three business days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

6. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence or your employment by the institution within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

Date: March 10, 2011

Defendant

Attorney for Defendant

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.

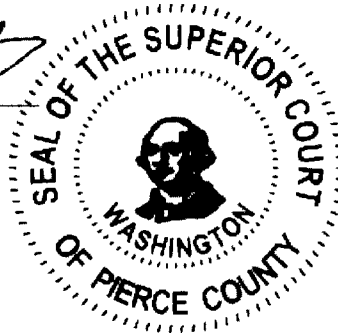
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Alyssa Porter, Deputy.

Dated: Jun 24, 2014 9:15 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: CEA905FD-F20F-6452-DFA8C007A6A7AEE3.

This document contains 18 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Opinion



08-1-02916-B 40966305 CPRM 08-01-13

24735 8 DEPT 018 200048

IN OPEN COURT

Case Number: 08-1-02916-8 Date: June 20, 2013
Serial: CEA90580-F20F-6452-DFEE41DB6758DB27

Printed By: Kevin Stock Pierce County Clerk, Washington

JUL 30 2013

Pierce County Clerk

By: [Signature]

DEPUTY

FILED
COURT OF APPEALS
DIVISION II

2013 JUL 30 AM 10:28

STATE OF WASHINGTON

BY [Signature]
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY LAMONT RANDALL,

Appellant.

No. 41916-5-II

08-1-02916-8

UNPUBLISHED OPINION

JOHANSON, A.C.J. — Jeffrey Lamont Randall appeals his jury convictions of two counts of unlawful delivery of a controlled substance to a minor with sexual motivation and two counts of involving a minor in a drug transaction to deliver a controlled substance. Randall argues that the trial court violated his right to a unanimous verdict because the trial court did not give a *Petrich*¹ instruction, and failure to do so was not harmless. He also argues that (1) insufficient evidence supports the jury's finding of sexual motivation, (2) the jury returned inconsistent verdicts, (3) the State violated his right to be free from double jeopardy by failing to allege specific incidents to support the involving a minor in a drug transaction and unlawful delivery convictions, (4) the trial court gave an erroneous special verdict jury instruction that required the jury to be unanimous to answer "no" on the special verdict forms, and (5) the trial court should have given a missing witness instruction for the victims' parents. Randall makes various other arguments in his statement of additional grounds (SAG).

¹ *State v. Petrich*, 101 Wn.2d 566, 569, 683 P.2d 173 (1984), modified in part by *State v. Kitchen*, 110 Wn.2d 403, 756 P.2d 105 (1988).

No. 41916-5-II

We hold that (1) the failure to give a *Petrich* instruction was harmless, (2) sufficient evidence supports the jury's sexual motivation findings, (3) the jury's verdicts were not inconsistent, (4) Randall's arguments regarding double jeopardy are hypothetical and not ripe for review, (5) the trial court's special verdict instruction was proper, and (6) a missing witness instruction for the victims' parents was unnecessary. Randall's remaining SAG claims are not preserved for appeal, too vague, or reliant on matters outside the record; therefore we do not further consider them. Accordingly, we affirm.

FACTS

I. RANDALL'S RELATIONSHIP WITH HT AND VN

In spring 2008, HT and VN² were 15-year-old female students at Tacoma high schools. Students, including HT and VN, commonly spent time at a particular bus stop near the school, smoking cigarettes and marijuana. Randall, a 40-year-old male known as "House" and "Weed Man," had a reputation among the students for providing alcohol, marijuana, and transportation. 4 Verbatim Report of Proceedings (VRP) at 636-37, 642, 648, 5 VRP at 733, 8 VRP at 1334. HT and VN met Randall through friends and started regularly buying marijuana from him. HT and VN also desired to be seen with him to gain popularity at school.

From approximately March to early June 2008, Randall picked up HT and VN every day after school. They drove around Pierce County selling marijuana out of his car. But before Randall permitted HT and VN to sell marijuana, he put them through loyalty tests. These tests included talking about themselves while naked, kissing him, and taking their shirts off for him. Eventually, he required each girl to have sexual intercourse with him. Randall knew that HT and

No. 41916-5-II

VN were only 15 at the time and that they did not want to engage in intercourse with him. After they passed the loyalty tests, HT and VN participated in Randall's sales by weighing the marijuana, collecting money, and taking marijuana to sell at school. They were often with Randall all afternoon and evening and would sneak out of their parents' homes to be with Randall at night.

Randall regularly gave HT and VN marijuana and alcohol for their own use and he sometimes gave them a portion of the sale proceeds as compensation. Randall called HT and VN "Mama" and "Little Mama" and made them call him "Papa." 4 VRP 665, 5 VRP at 733, 837. When he became irritated with either HT or VN, he treated them like they were "in trouble" and scared them by telling them about his "goons." 4 VRP at 664. HT and VN feared Randall's "goons" as dangerous men who would hurt people at his command. 4 VRP at 664, 5 VRP at 802.

II. INVESTIGATION AND TRIAL

In late April or early May 2008, another high school student reported to police rumors that Randall had raped HT and VN. HT and VN initially denied knowing Randall, but they later admitted that they had lied because they feared for their safety. In June 2008, a Tacoma police officer arrested Randall on an unrelated warrant. In jail, Detective Steven Reopelle interviewed Randall about the rape and drug allegations.

During trial, the State filed a third amended information charging Randall with four counts of third degree child rape, two counts of involving a minor in a drug transaction, and two counts of unlawful delivery with sexual motivation. The information did not include specific

² We use initials to protect minors' identity.

No. 41916-5-II

dates for the offenses, stating that the offenses had occurred between March 1 and June 4, 2008. Randall acknowledged receipt of the amended information, waived formal reading, waived any objection to the amendment, and pleaded not guilty.

At trial, HT and VN testified consistently with the facts outlined above and admitted that they had lied during the initial police interviews, that they had lied to their parents, and that they could not remember specific dates or times of the events occurring nearly three years earlier. They testified that they had sold marijuana for Randall for about three months in spring 2008 and that he had separately raped them each twice. Randall called one witness, the house manager at the group home facility where Randall lived at the time of the allegations. The house manager testified about the facility in general, that there was always staff onsite who performed room checks all hours of the day, and that Randall never caused problems for the staff. Randall did not testify.

Randall proposed a missing witness instruction for HT's and VN's parents and a *Petrich* unanimity jury instruction related to each charge. The trial court refused both, reasoning that a missing witness instruction was unnecessary and that the evidence established a continuing course of conduct involving an ongoing enterprise with a single objective; thus a *Petrich* unanimity instruction was not needed. Regarding the sexual motivation³ special verdict, the trial court instructed the jury:

You will also be furnished with two special verdict forms for the crimes charged in Counts VII and VIII. If you find the defendant not guilty of these crimes, do not use the special verdict forms. If you find the defendant guilty, you

³ The court defined sexual motivation to mean "that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification." CP at 296 (Jury Instruction No. 24).

No. 41916-5-II

will then use the corresponding special verdict form or forms and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict forms "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no."

Clerk's Papers at 304 (Jury Instruction No. 31).

During closing arguments, the State argued that the offenses occurred sometime during the charged time period and explained that the exact dates were not necessary because it was clear that the acts occurred "all the time." 11 VRP at 1822. Randall's counsel generally denied all allegations and argued that (1) HT and VN had picked Randall as an easy target to unfairly blame when their drug and alcohol use was revealed; and (2) HT and VN lacked credibility because their testimony lacked detail, they lied to their parents and police, and their memories were impaired from alcohol and drug use. Randall's counsel also pointed out inconsistencies between HT's and VN's testimony and the testimony from other witnesses and claimed that Randall was innocent and simply a lonely man who reached out to kids because he wanted to help them.

The jury acquitted Randall of the rape charges but found him guilty of two counts of involving a minor in a drug transaction, one count for each victim, and two counts of unlawful delivery of a controlled substance with sexual motivation, one count for each victim. Randall appeals.

ANALYSIS

I. UNANIMOUS VERDICTS

First, Randall contends that the trial court violated his right to a unanimous verdict because the trial court did not give a *Petrich* instruction and the failure to do so was not

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harmless. Specifically, he argues that (1) HT's and VN's testimony was general in nature and could not have supported the jury's verdicts, and (2) the State presented insufficient evidence of unlawful delivery and involving a minor in a drug transaction. Assuming, without deciding, that both the unlawful delivery and involving a minor convictions involved multiple acts that required a *Petrich* unanimity instruction,⁴ we hold that any error in failing to give such instruction was harmless and that HT's and VN's testimony was sufficient to support four convictions; one unlawful delivery charge per victim and one involving a minor charge per victim.

To convict a criminal defendant, a unanimous jury must conclude that the criminal act charged has been committed. *State v. Petrich*, 101 Wn.2d 566, 569, 683 P.2d 173 (1984), *modified in part by State v. Kitchen*, 110 Wn.2d 403, 405-06, 756 P.2d 105 (1988). In cases where several acts are alleged, any one of which could constitute the crime charged, the jury must unanimously agree on the act or incident that constitutes the crime. *Kitchen*, 110 Wn.2d at 411; *Petrich*, 101 Wn.2d at 572. In such "multiple acts" cases, Washington law applies the "either or" rule: "[E]ither the State must elect the particular criminal act upon which it will rely for conviction, or . . . the trial court [must] instruct the jury that all of them must agree that the same underlying criminal act has been proven beyond a reasonable doubt." *State v. Hayes*, 81 Wn. App. 425, 430-31, 914 P.2d 788, *review denied*, 130 Wn.2d 1013 (1996) (alteration in original) (quoting *Kitchen*, 110 Wn.2d at 411).

⁴ We move directly to a harmless error analysis because we note some inconsistency between the State's concession of error in its brief and its retraction of this concession, at least in part, at oral argument. Compare Br. of Resp't at 22-23 with Wash. Court of Appeals oral argument, *State v. Randall*, No. 41916-5-II (Jan. 18, 2013) at 18 min., 48 sec.—23 min., 20 sec. (on file with court).

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We presume that the trial court's failure to give a *Petrich* instruction when needed is prejudicial. *State v. Bobenhouse*, 166 Wn.2d 881, 893, 214 P.3d 907 (2009); *State v. Coleman*, 159 Wn.2d 509, 512, 150 P.3d 1126 (2007). In multiple acts cases, "when the State fails to elect which incident it relies upon for the conviction or the trial court fails to instruct the jury that all jurors must agree that the same underlying criminal act has been proved beyond a reasonable doubt," we will find this error harmless "only if no rational trier of fact could have entertained a reasonable doubt that each incident established the crime beyond a reasonable doubt." *Kitchen*, 110 Wn.2d at 405-06.

The State argues that this case is similar to *Bobenhouse*, 166 Wn.2d 881; *State v. Camarillo*, 115 Wn.2d 60, 794 P.2d 850 (1990); and *State v. Allen*, 57 Wn. App. 134, 139, 787 P.2d 566 (1990), where the courts held that the lack of a unanimity instruction was harmless. In these cases, the State charged the defendants with one count of the alleged crimes and the victims testified that several incidents occurred, each one of which could have supported the one count charged. *Bobenhouse*, 166 Wn.2d at 893-94; *Camarillo*, 115 Wn.2d at 70; *Allen*, 57 Wn. App. at 139.⁵ At trial, the defendants offered general denials and presented no evidence on which the jury could discriminate among incidents. *Bobenhouse*, 166 Wn.2d at 895; *Camarillo*, 115 Wn.2d at 72; *Allen*, 57 Wn. App. at 139. These courts determined that sufficient evidence established that the acts occurred and the lack of the unanimity instruction was harmless. *Bobenhouse*, 166 Wn.2d at 895; *Camarillo*, 115 Wn.2d at 72; *Allen*, 57 Wn. App. at 139.

⁵ Allen was actually charged with three counts of indecent liberties involving two victims, but only argued that the unanimity instruction should have been given for one of the counts; thus the analysis focused on the one count. *Allen*, 57 Wn. App. at 137.

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Randall's case is similar to *Bobenhouse*, *Camarillo*, and *Allen*. Importantly, the crucial point in each was that "proof of the substantially similar incidents relied upon a single witness' detailed, uncontroverted testimony." *Camarillo*, 115 Wn.2d at 70 (quoting *State v. Camarillo*, 54 Wn. App. 821, 828, 776 P.2d 176 (1989)). Here, the State presented two witnesses' detailed uncontroverted testimony about the substantially similar incidents. HT and VN testified that Randall involved them in his marijuana sales and provided them with marijuana for their own use every day between March and June 2008. And, as in *Bobenhouse*, *Camarillo*, and *Allen*, Randall generally denied the allegations, the main issue at trial was the victims' credibility, and the jury had no uncontroverted evidence on which to rationally discriminate among incidents. *Bobenhouse*, 166 Wn.2d at 895; *Camarillo*, 115 Wn.2d at 70-71; *Allen*, 57 Wn. App. at 139. Here, the jury's verdict reflects that it accepted HT's and VN's testimony; we will not disturb the jury's credibility determinations. *Camarillo*, 115 Wn.2d at 71.

Randall relies on *Coleman* to argue that the error was not harmless. *Coleman*, 159 Wn.2d at 512. We disagree. The State charged Coleman with one count of child molestation for each victim for acts occurring over a period of three years. *Coleman*, 159 Wn.2d at 511. At Coleman's trial, a Child Protective Services worker testified that the victim, CV, told her that (1) Coleman inappropriately touched her while watching a particular movie on a particular day, and (2) additional touching incidents occurred in Coleman's house and car. *Coleman*, 159 Wn.2d at 514. Then, CV's school counselor and the other witness testified that CV told them that "nothing really happened" during the movie. *Coleman*, 159 Wn.2d at 514. And, CV testified that no touching occurred at the movie. *Coleman*, 159 Wn.2d at 514. But, the State did not abandon the movie incident even after this contradictory evidence and instead, during closing

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arguments, told the jury to ignore CV's contradiction and convict anyway.⁶ *Coleman*, 159 Wn.2d at 515.

The Supreme Court held that the failure to give a unanimity instruction was not harmless in that situation, explaining that

[a]n election or unanimity instruction may not be required in a multiple act case if there is no controverted evidence. *Camarillo*, 115 Wn.2d 60, 794 P.2d 850. But the case before us is not one lacking controverted evidence; e.g., a case in which a witness says off-handedly that abuse occurred in five different instances but describes with particularity only one instance. The focus of a trial, at least for jurors, potentially changes once evidence is introduced of separate identifiable incidents.

Coleman, 159 Wn.2d at 514. The Supreme Court concluded that because the incident at the movie was a focus at trial and because CV did not provide evidence of any other instances with particularity, rational jurors could disagree about whether molestation occurred at the movie specifically and it was prejudicial error to omit the *Petrich* instruction. *Coleman*, 159 Wn.2d at 515.

But unlike in *Coleman*, here there was no contradictory evidence of a specific incident. And there were no separate identifiable incidents among which the jury could distinguish. HT and VN did not describe any one incident with particularity. Thus, Randall's jury considered the "totality of the evidence of several incidents to ascertain whether there was proof beyond a reasonable doubt to substantiate guilt because of the acts constituting one incident and also to believe that if one happened, then all must have happened." *Camarillo*, 115 Wn.2d at 71.

⁶ Here, HT and VN's stories changed between the initial questioning by parents and the police and their testimony at trial. But HT and VN also explained the reason why their testimony changed—their fear of Randall and his goons. And when the girls testified at trial, their testimony was not contradictory.

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Randall's jury determined that there was such proof. We hold that the trial court's failure to give a unanimity instruction was harmless.⁷

II. SUFFICIENT EVIDENCE OF SEXUAL MOTIVATION

Randall next argues that the State presented insufficient evidence to support the jury's sexual motivation findings related to the unlawful delivery to a minor convictions.⁸ Concluding that sufficient evidence supports the jury's sexual motivation findings when viewed in the light most favorable to the State, we reject this argument.

Evidence is sufficient to support a guilty finding if, "after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt." *State v. Rose*, 175 Wn.2d 10, 14, 282 P.3d 1087 (2012). "A claim of insufficient evidence admits the truth of the State's evidence and all inferences that reasonably can be drawn from that evidence." *State v. Caton*, 174 Wn.2d 239, 241, 273 P.3d 980 (2012). We consider circumstantial and direct evidence to be equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). And we defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v.*

⁷ Randall also argues that HT's and VN's general testimonies did not properly support Randall's convictions. But, HT and VN did not describe any one incident with particularity which is why the failure to give a *Petrich* instruction was harmless. Also, Randall argues that the lack of specificity in his verdict violates his right to appeal because he does not know which allegations supported the jury's verdict. He asserts that the jury's acquittal on the rape charges show that the jury did not find all of the witnesses' testimony entirely credible and that we cannot conclude the jury simply accepted the complaining witnesses' allegations without question. But, we do not review a jury's determination on witness credibility or the weight of the evidence, and Randall's verdicts are not contradictory. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004), *aff'd*, 166 Wn.2d 380, 208 P.3d 1107 (2009).

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Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004), *aff'd*, 166 Wn.2d 380, 208 P.3d 1107 (2009).

An allegation of sexual motivation requires the State to prove that sexual gratification was among the defendant's purposes in committing the charged offense. *State v. Thompson*, 169 Wn. App. 436, 476, 290 P.3d 996 (2012), *review denied*, 176 Wn.2d 1023 (2013) (citing RCW 9.94A.030(47)). The State must present "evidence of identifiable conduct by the defendant while committing the offense which proves beyond a reasonable doubt the offense was committed for the purpose of sexual gratification." *Thompson*, 169 Wn. App. at 476 (quoting *State v. Halstien*, 122 Wn.2d 109, 120, 857 P.2d 270 (1993)). Evidence of sexual motivation is not limited to criminal sexual contact. *Halstien*, 122 Wn.2d at 121. In fact, the Supreme Court has explained, "Reading in a requirement of sexual contact would undermine the purpose of the statute, which was enacted to fill a perceived gap in the criminal code not covered by existing sex offense crimes." *Halstien*, 122 Wn.2d at 121.

HT's and VN's testimony provided sufficient evidence to support the jury's finding that Randall delivered controlled substances to them for the purpose of his sexual gratification. The jury heard testimony describing Randall's relationship with the victims. Randall exploited HT's and VN's low self-esteem by encouraging them to believe that selling marijuana for him would improve their social status among their peers. Randall wanted HT and VN to rely on him emotionally and always call him if they needed anything. The records of the phone calls between Randall and HT and VN spanned through all hours of the night and day over the

⁸ The jury found sexual motivation for the unlawful delivery convictions but not for the involving a minor in drug transaction charges.

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charged period of time and Randall withheld marijuana whenever HT or VN upset him. 5 VRP at 799-801. Further, Randall gave HT and VN nicknames of "Mama" and "Little Mama" and made them call him "Papa," while the other high school kids all called him "House" and "Weed Man." 4 VRP 665, 5 VRP at 733, 837. This is circumstantial evidence that he considered and treated HT and VN as his girlfriends.

Randall conditioned HT and VN's participation in his marijuana selling business on the performance of sexualized loyalty tests, and he bragged to another high school student that he had sex with both HT and VN. These loyalty tests included talking about themselves while naked, kissing him, and taking their shirts off for him. After the girls passed Randall's sexual loyalty tests, he allowed them to sell marijuana for him, and in return, Randall delivered marijuana to them for their own use. The jury could have reasonably believed that the evidence demonstrated that Randall treated HT and VN as girlfriends, that he gave the girls marijuana in part because he wanted them to perform sexual acts, and that he received sexual gratification from their sexual acts. Taking the evidence in the light most favorable to the State, we hold that the jury could reasonably conclude that Randall delivered marijuana to HT and VN for the purpose of his sexual gratification, and that the State presented sufficient evidence for the jury to find that Randall unlawfully delivered controlled substances to HT and VN with sexual motivation.⁹ *Rose*, 175 Wn.2d at 14.

⁹ Randall raises further sufficiency claims in his SAG. Since we have adequately addressed this issue as raised by Randall's appellate counsel, we do not review it again in the SAG context. See RAP 10.10(a).

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III. INCONSISTENT VERDICTS

Randall next argues that the jury's sexual motivation finding and simultaneous rape acquittals created inconsistent verdicts and these inconsistent verdicts also show a lack of a unanimous verdict. We disagree.

"Inconsistent verdicts . . . present a situation where "error" in the sense that the jury has not followed the court's instructions, most certainly has occurred.'" *State v. Goins*, 113 Wn. App. 723, 730, 54 P.3d 723 (2002), *aff'd*, 151 Wn.2d 728, 92 P.3d 181 (2004) (quoting *United States v. Powell*, 469 U.S. 57, 65, 105 S. Ct. 471 83 L. Ed. 2d 461 (1984)). But "[w]here the jury's verdict is supported by sufficient evidence from which it could rationally find the defendant guilty beyond a reasonable doubt, we will not reverse on grounds that the guilty verdict is inconsistent with an acquittal on another count." *Goins*, 113 Wn. App. at 734 (alteration in original) (quoting *State v. Ng*, 110 Wn.2d 32, 48, 750 P.2d 632 (1988)).

Here, Randall's jury was instructed that to convict of third degree child rape it must find that he had "sexual intercourse with a child who is at least fourteen years old but less than sixteen years old, who is not married to the person, and who is [at] least forty-eight months younger than the person." 2 CP at 278 (Jury Instruction No. 6). The trial court defined "sexual intercourse" as "that the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight[,] or any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another." 2 CP at 283 (Jury Instruction No. 11). The trial court also instructed the jury that "sexual motivation" means "one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification." 2 CP at 296 (Jury Instruction No. 24).

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We hold that acquittals on the rape charges were not inconsistent with a guilty finding for sexual motivation because sexual motivation did not require the jury to find that sexual intercourse occurred. Instead, the jury had to agree only that Randall's acts were committed, at least in part, for sexual gratification purposes. The jury could reasonably believe that Randall delivered a controlled substance for his sexual gratification while also simultaneously believing sexual intercourse did not occur; therefore, the verdicts were consistent.

IV. DOUBLE JEOPARDY

Randall further argues the State's failure to allege specific incidents violated his right to be free from double jeopardy because the State may be able to bring further prosecutions for the same acts. We disagree.

We review double jeopardy claims de novo. *State v. Kelley*, 168 Wn.2d 72, 76, 226 P.3d 773 (2010). "The United States Constitution provides that a person may not be subject 'for the same offense to be twice put in jeopardy of life or limb.'" *State v. Chouap*, 170 Wn. App. 114, 122, 285 P.3d 138 (2012) (quoting U.S. CONST. amend. V). Similarly, the Washington Constitution provides that a person may not be put in jeopardy twice for the same offense. *Chouap*, 170 Wn. App. at 122 (quoting WASH. CONST. art. I, § 9). Randall does not argue that he has twice been put in jeopardy for the same offense. Instead, he argues that at some time in the future he *may* twice be put in jeopardy. We reject his argument as hypothetical and not ripe

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for review.¹⁰

V. SPECIAL VERDICT INSTRUCTION

Randall argues that the trial court gave an erroneous special verdict jury instruction that required the jury to be unanimous to answer “no” on the special verdict forms. Br. of Appellant at 23. We disagree.

The challenged jury instruction read:

You will also be furnished with two special verdict forms for the crimes charged in Counts VII and VIII. If you find the defendant not guilty of these crimes, do not use the special verdict forms. If you find the defendant guilty, you will then use the corresponding special verdict form or forms and fill in the blank with the answer “yes” or “no” according to the decision you reach. In order to answer the special verdict forms “yes,” you must unanimously be satisfied beyond a reasonable doubt that “yes” is the correct answer. If you have a reasonable doubt as to the question, you must answer “no.”

CP at 304 (Jury Instruction No. 31).

We review alleged errors of law in jury instructions de novo. *Boeing Co v Key*, 101 Wn. App. 629, 632, 5 P.3d 16, review denied, 142 Wn.2d 1017 (2001). Randall’s contention regarding this jury instruction is untenable because it relies on the special verdict instruction

¹⁰ Also, in his SAG, Randall asserts that his right to be free from double jeopardy was violated when (1) the trial court admitted evidence that was also used in a Tacoma Municipal Court misdemeanor prosecution, (2) the trial court admitted evidence seized incident to arrest, (3) the State used evidence against him for a misdemeanor in municipal court and in this case, (4) the State charged him with multiple counts of involving a minor in a drug transaction without establishing specific and different places and times, and (5) the State failed to seek trial on all drug charges at the same time. Randall’s arguments relating to the Tacoma Municipal Court cases depend on matters outside the record; thus we cannot address them on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). And, although RAP 10.10 does not require Randall to refer to the record or to cite applicable authority in his SAG, he is required to inform us of the “nature and occurrence of alleged errors.” RAP 10.10(c). Randall’s remaining assertions regarding double jeopardy are too vague to allow this court to identify the issues; thus, we do not further consider them.

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given in *State v. Bashaw*, 169 Wn.2d 133, 145, 234 P.3d 195 (2010), and later rejected in *State v. Guzman Nuñez*, 174 Wn.2d 707, 709-10, 285 P.3d 21 (2012). In *Nuñez*, our Supreme Court overruled *Bashaw*'s nonunanimity rule, concluding it "conflicts with statutory authority, causes needless confusion, does not serve the policies that gave rise to it, and frustrates the purpose of jury unanimity." *Nuñez*, 174 Wn.2d at 709-10. Applying *Nuñez*, we hold that the trial court properly instructed the jury regarding the special verdict.

VI. SAG ISSUES

A. Missing Witnesses

In his pro se SAG, Randall asserts that the trial court erred by failing to give his proposed missing witness instruction based on the absence of HT's and VN's parents. We disagree.

We review the adequacy of jury instructions de novo. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996). A missing witness instruction is proper when (1) the witness is peculiarly available to the party; (2) the testimony relates to an issue of fundamental importance as contrasted to a trivial or unimportant issue; and (3) the circumstances establish, as a matter of reasonable probability, that the party would not knowingly fail to call the witness in question unless the witness's testimony would be damaging. *State v. Montgomery*, 163 Wn.2d 577, 598-99, 183 P.3d 267 (2008).

At trial, Randall asked for a missing witness instruction. The State opposed the instruction as unnecessary under the *Montgomery* test. The State explained that Randall's counsel had interviewed the witnesses, knew where to find them, and could have subpoenaed them as well. The State called one of the mothers to testify, but the court determined she was

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intoxicated and not a competent witness. The mother did not return later to testify as instructed. The court ruled that a missing witness instruction was not proper. We agree.

HT's and VN's parents were not peculiarly available to either party and their testimony would not have been of fundamental importance because they did not have independent knowledge of their daughters' interactions with Randall. *Montgomery*, 163 Wn.2d 598-99. Moreover, there is no evidence that the State failed to call the witness because the witness's testimony would be damaging. We hold the trial court did not err by failing to give a missing witness instruction.

B. Arresting Officer

Randall further asserts that the arresting officer should have testified at the CrR 3.5 and 3.6 hearing about the search of Randall's car. Because this claimed error was not raised in the trial court, we decline to address it. Thus, Randall did not preserve for appeal any error regarding the arresting officer; in addition, Randall's assertion is too vague for us to address. RAP 2.5(a); RAP 10.10.

C. Jail Interview

Randall next asserts that the trial court erred by admitting into evidence his jail interview with Detective Reopelle. Randall claims that the jail interview violated his right to counsel because at the time of the interview, he was in custody on misdemeanor marijuana charges following his arrest for a traffic incident. Randall explains that he was waiting for his misdemeanor arraignment when Detective Reopelle pulled him out of the line and took him back to the jail for the interview. According to Randall, this action violated his right to counsel

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because it was obvious that Detective Reopelle did not want Randall to be assigned counsel before the interview.¹¹

But, Randall does not explain how the trial court erred. Instead, he asserts that he had appointed counsel before the interview with Detective Reopelle, citing municipal court records. SAG at 40. Because Randall bases this assertion on matters outside our record, we cannot consider it on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

D. Prosecutorial Misconduct

Next, Randall asserts that the State committed prosecutorial misconduct by filing an amended information that added charges more than 18 months after his original indictment. At trial, Randall expressly waived any objection to the amendment on the record. When a defendant fails to object at trial to alleged prosecutorial misconduct, he waives any error on appeal unless he can show that the misconduct was so flagrant or ill intentioned that the trial court could not have cured the error by instructing the jury. *State v. Weber*, 159 Wn.2d 252, 270,

¹¹ This issue was raised during Randall's CrR 3.5 and 3.6 motions. His trial counsel explained that Detective Reopelle was the lead detective on the rape charges but Detective Reopelle had not yet filed the rape charges on the day Randall was scheduled to be arraigned on the misdemeanor possession charges. At the motion hearing, Randall asserted that Detective Reopelle and the prosecutor's office had violated his right to counsel because they wrongfully postponed Randall's misdemeanor arraignment so that Detective Reopelle could interview him before he was arraigned. In response, the State argued that Randall could not show evidence of any conspiracy to deprive him of his rights, that Randall was properly read his *Miranda* warnings before the interview, that his statements were voluntary, and that Detective Reopelle discontinued the interview as soon as Randall invoked his rights. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1062, 16 L. Ed. 2d 694 (1966).

The trial court denied Randall's motion to suppress his interview with Detective Reopelle, characterizing the issue as not involving *Miranda* rights but, instead, involving whether the sequencing of events justified a suppression order. The trial court ruled there was no evidence of a conspiracy between Detective Reopelle and the prosecutor's office to circumvent Randall's right to counsel.

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149 P.3d 646 (2006), *cert. denied*, 551 U.S. 1137 (2007). Randall fails to meet this heightened burden.

Additionally, Randall asserts that the trial court erroneously denied a mistrial based on opinion testimony from Detective Reopelle and HT and that the State committed misconduct by eliciting that testimony. Although RAP 10.10 does not require Randall to refer to the record or cite applicable authority, he is required to inform us of the "nature and occurrence of alleged errors." RAP 10.10(c). His prosecutorial misconduct claims are too vague and the record does not support them; thus, we cannot address them.

E. Remaining Claims

Randall makes several claims that we are also unable to review on direct appeal because they rely on matters outside this court's record. *McFarland*, 127 Wn.2d at 335. First, Randall asserts that his right to be present at trial was violated during jury deliberations when his counsel and the prosecutor were called into court and he was not present. He concedes this claim involves matters outside the record.

Next, Randall claims that the appellate record is incomplete because the transcripts he received do not include any reports of proceedings from the time of his arrest in June 2008 until November 2009. Randall is correct, the first VRP transcripts in our record is from November 2009. But because we lack an adequate record to know what happened before November 2009, we are unable to address this issue on direct appeal. *McFarland*, 127 Wn.2d at 335.

Also, Randall makes several claims for the first time on appeal. We will not review an issue raised for the first time on appeal unless the claimed error is a manifest error affecting a constitutional right. RAP 2.5(a)(3). First, Randall asserts a CrR 3.3 speedy trial right violation,

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claiming that he was in jail for approximately two-and-a-half years before his trial started. SAG at 15-19. But violations of CrR 3.3 are not constitutionally based and cannot be raised for the first time on appeal. *State v. Smith*, 104 Wn.2d 497, 508, 707 P.2d 1306 (1985).

Next, Randall asserts that the trial court erred by admitting under ER 404(b) trace evidence of marijuana found in his backpack. Evidentiary errors are not of constitutional magnitude and because Randall did not object to the evidence's admission at trial, we will not review it on appeal. *State v. Jackson*, 102 Wn.2d 689, 695, 689 P.2d 76 (1984).

Finally, Randall claims that the trial court should have found that the State engaged in *Brady*¹² and discovery violations because the State failed to make witnesses available for defense interviews, the State failed to disclose an e-mail from HT's pediatrician, and the trial court failed to disclose in-camera review of counseling records. In reviewing a *Brady* challenge, on direct review, we can consider only matters demonstrated by the trial record. *McFarland*, 127 Wn.2d at 335. An appellant has the burden of perfecting the record so that this court has before it all the evidence relevant to the issues on appeal. RAP 9.1(a), 9.6(a). In November 2009, Randall moved to compel production of the counseling records for in camera review. The court granted the motion for in camera review. Our record does not show any further discussion about these counseling records thus we are unable to address Randall's claims because the record is not complete enough to allow review of the claimed error. RAP 9.1(a), 9.6(a).

Similarly, in August 2010, Randall moved to dismiss all charges based in part on the State's alleged failure to make the witness available and its recent disclosure of the email from

¹² *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

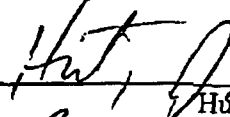
No. 41916-5-II

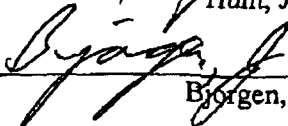
HT's pediatrician when trial was scheduled about a week later. The court denied the motion to dismiss but granted Randall a continuance and ordered that the State work with Randall to make those witnesses available. Because the State provided Randall with the e-mail in August 2010, several months before his January 2011 trial, he cannot show that he was prejudiced and his claim that the State did not timely provide it fails. *Strickler v. Greene*, 527 U.S. 263, 280, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) (holding that to establish a *Brady* violation, the defendant must show (1) the evidence was favorable to the defendant, (2) the State suppressed the evidence, and (3) the suppression prejudiced the defendant). And our record does not indicate any further discussion about the State making the witnesses available thus we are also unable to address this claim.

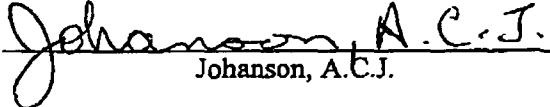
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

We concur:


Hunt, J.


Bjorgen, J.


Johanson, A.C.J.

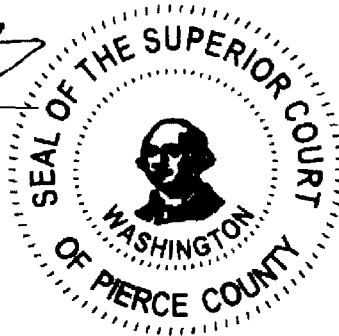
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Alyssa Porter, Deputy.

Dated: Jun 24, 2014 9:15 AM



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APPENDIX “C”

Mandate

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

December 23 2013 8:30 AM

DIVISION II

KEVIN STOCK
COUNTY CLERK
NO: 08-1-02916-8

STATE OF WASHINGTON,
Respondent,

No. 41916-5-II

v.

MANDATE

JERRY LAMONT RANDALL,
Appellant.

Pierce County Cause No.
08-1-02916-8

The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

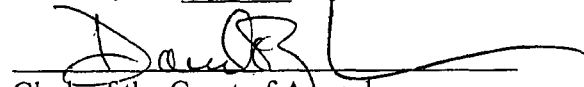
This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on July 30, 2013 became the decision terminating review of this court of the above entitled case on December 11, 2013. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees have been awarded in the following amount.

Judgment Creditor: State of Washington \$10.11

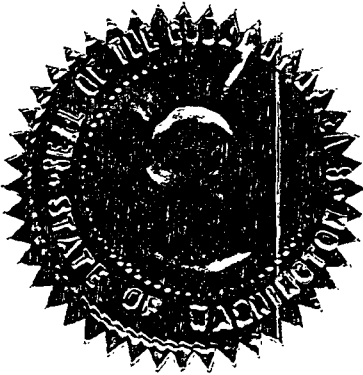
Judgment Creditor: AIDF \$10,700.48

Judgment Debtor : Jeffrey Lamont Randall \$10,710.59

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 20th day of December, 2013.



Clerk of the Court of Appeals,
State of Washington, Div. II



cc:

Hon. Susan K. Serko
Kawyne Ann Lund
Jan Trasen
Jason Eggertsen Ruyf

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

JERRY LAMONT RANDALL,
Appellant.

No. 41916-5-II

MANDATE

Pierce County Cause No.
08-1-02916-8

The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

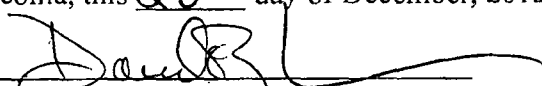
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Judgment Creditor: State of Washington \$10.11

Judgment Creditor: AIDF \$10,700.48

Judgment Debtor : Jeffrey Lamont Randall \$10,710.59

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 20th day of December, 2013.


Clerk of the Court of Appeals,
State of Washington, Div. II



cc:

Hon. Susan K. Serko
Kawyne Ann Lund
Jan Trasen
Jason Eggertsen Ruyf

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Alyssa Porter, Deputy.

Dated: Jun 24, 2014 9:15 AM



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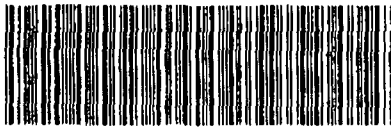
APPENDIX “D”

3rd Amended Information

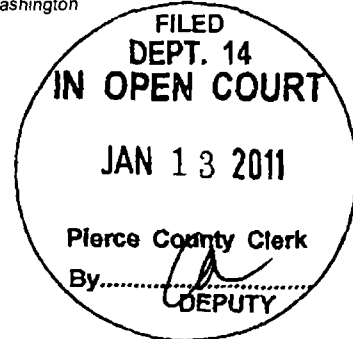
Case Number: 08-1-02916-8 Date: June 6, 2014

SerialID: 7314EBBE-F20F-6452-D7668EBD9C60953C

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 35757416 AMINF3 01-24-11



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO 08-1-02916-8

vs.

JEFFREY LAMONT RANDALL,

THIRD AMENDED INFORMATION

Defendant.

DOB. 2/5/1968

SEX : MALE

RACE: BLACK

PCN#: 539487094

SID#: 14769592

DOL#: WA RANDAJL323CE

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEFFREY LAMONT RANDALL of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, committed as follows:

That JEFFREY LAMONT RANDALL, in the State of Washington, during the period between the 1st day of March, 2008 and the 4th day of June, 2008, did unlawfully and feloniously, being at least 48 months older than H.T., engage in sexual intercourse with H.T., who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEFFREY LAMONT RANDALL of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows.

That JEFFREY LAMONT RANDALL, in the State of Washington, during the period between the 1st day of March, 2008 and the 4th day of June, 2008, did unlawfully and feloniously, being at least

THIRD AMENDED INFORMATION- 1

ORIGINAL

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

Case Number: 08-1-02916-8 Date: June 6, 2014

SerialID: 7314EBBE-F20F-6452-D7668EBD9C60953C

Certified By: Kevin Stock Pierce County Clerk, Washington

48 months older than H T , engage in sexual intercourse with H.T., who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

COUNT III

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEFFREY LAMONT RANDALL of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JEFFREY LAMONT RANDALL, in the State of Washington, during the period between the 1st day of March, 2008 and the 4th day of June, 2008, did unlawfully and feloniously, being at least 48 months older than V.N., engage in sexual intercourse with V.N , who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

COUNT IV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEFFREY LAMONT RANDALL of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JEFFREY LAMONT RANDALL, in the State of Washington, during the period between the 1st day of March, 2008 and the 4th day of June, 2008, did unlawfully and feloniously, being at least 48 months older than V.N , engage in sexual intercourse with V.N., who is at least 14 years old but less than 16 years old and not married to the defendant, contrary to RCW 9A 44.079, and against the peace and dignity of the State of Washington

COUNT V

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEFFREY LAMONT RANDALL of the crime of INVOLVING A MINOR IN A TRANSACTION TO DELIVER CONTROLLED SUBSTANCE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

THIRD AMENDED INFORMATION- 2

Case Number: 08-1-02916-8 Date: June 6, 2014
SerialID: 7314EBBE-F20F-6452-D7668EBD9C60953C
Certified By: Kevin Stock Pierce County Clerk, Washington

1 That JEFFREY LAMONT RANDALL, in the State of Washington, during the period between
2 the 1st day of March, 2008 and the 4th day of June, 2008, did unlawfully, feloniously, and knowingly
3 involve a person under the age of eighteen years of age (H.T.) in a transaction to deliver a controlled
4 substance, to-wit Marijuana, classified under Schedule I of the Uniformed Controlled Substance Act,
contrary to RCW 69.50.4015, and against the peace and dignity of the State of Washington.

COUNT VI

5 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
6 authority of the State of Washington, do accuse JEFFREY LAMONT RANDALL of the crime of
7 INVOLVING A MINOR IN A TRANSACTION TO DELIVER CONTROLLED SUBSTANCE, a crime
8 of the same or similar character, and/or a crime based on the same conduct or on a series of acts
9 connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect
to time, place and occasion that it would be difficult to separate proof of one charge from proof of the
others, committed as follows:

10 That JEFFREY LAMONT RANDALL, in the State of Washington, during the period between
11 the 1st day of March, 2008 and the 4th day of June, 2008, did unlawfully, feloniously, and knowingly
12 involve a person under the age of eighteen years of age (V.N.) in a transaction to deliver a controlled
13 substance, to-wit: Marijuana, classified under Schedule I of the Uniformed Controlled Substance Act,
contrary to RCW 69.50.4015, and against the peace and dignity of the State of Washington.

COUNT VII

14 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
15 authority of the State of Washington, do accuse JEFFREY LAMONT RANDALL of the crime of
16 UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE TO A PERSON UNDER THE AGE
17 OF EIGHTEEN, a crime of the same or similar character, and/or a crime based on the same conduct or on
18 a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely
connected in respect to time, place and occasion that it would be difficult to separate proof of one charge
from proof of the others, committed as follows:

19 That JEFFREY LAMONT RANDALL, in the State of Washington, during the period between
20 the 1st day of March, 2008 and the 4th day of June, 2008, did unlawfully and feloniously, being eighteen
21 years of age or over, knowingly deliver to a person under eighteen years of age (H.T.) and at least three
22 years the said defendant's junior, a controlled substance, to-wit: Marijuana, classified under Schedule I of
23 the Uniform Controlled Substance Act, contrary to RCW 69.50.401(1)(2)(b) and 69.50.406(2), with
24 sexual motivation as defined in RCW 9.94A.030, and invoking the provisions of 9.94A.835, and adding
additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and
dignity of the State of Washington.

Case Number: 08-1-02916-8 Date: June 6, 2014

SerialID: 7314EBBE-F20F-6452-D7668EBD9C60953C

Certified By: Kevin Stock Pierce County Clerk, Washington

COUNT VIII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JEFFREY LAMONT RANDALL of the crime of UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE TO A PERSON UNDER THE AGE OF EIGHTEEN, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows

That JEFFREY LAMONT RANDALL, in the State of Washington, during the period between the 1st day of March, 2008 and the 4th day of June, 2008, did unlawfully and feloniously, being eighteen years of age or over, knowingly deliver to a person under eighteen years of age (V.N.) and at least three years the said defendant's junior, a controlled substance, to-wit: Marijuana, classified under Schedule I of the Uniform Controlled Substance Act, contrary to RCW 69.50 401(1)(2)(b) and 69.50.406(2), with sexual motivation as defined in RCW 9.94A.030, and invoking the provisions of 9.94A.835, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

DATED this 13th day of January, 2011.

TACOMA POLICE DEPARTMENT
WA02703

MARK LINDQUIST
Pierce County Prosecuting Attorney

kes

By



KARA E. SANCHEZ
Deputy Prosecuting Attorney
WSB# 35502

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 06 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Jun 6, 2014 2:28 PM



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APPENDIX “E”

Search Warrant Docs and transcript

FILED
IN COUNTY CLERK'S OFFICEIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE
COUNTY

COMPLAINT FOR SEARCH WARRANT

JUN 19 2008 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, COUNTY CLERK
DEPUTY

08 1-50565-~

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

No.

COMES NOW Detective Steven Reopelle #472, being first duly sworn, under oath,
deposes and says:

That on or about the 13th day of May, 2008, in Pierce County, Washington, a felony, to-wit:
Rape of a Child Third Degree, was committed by the act, procurement, or omission of another,
and that the following evidence, to-wit:

- 1) Crime scene processing to include, but not limited to, photographing, diagramming, video
taping and measuring;
- 2) Collection of trace evidence to include, but not limited to, blood, hairs, fibers and any other
biological fluids;
- 3) Indicia of occupancy, residency, and/or ownership of the premises described in the
Search Warrant, including, but not limited to, utility and telephone bills, canceled
envelopes, and keys.
- 4) Baby oil or similar lubricants;
- 5) Photographs as defined by RCW 9.68A.011, or images depicting minors, whether
clothed or unclothed, engaged in sexually explicit activity, as defined by RCW
9.68A.011;
- 6) Journals, notebooks, diaries, notes and/or letters that are sexually explicit and detail
sexual exploits and/or fantasies, specifically those documents which the participants are
minors;
- 7) Personal communications in electronic or written form including, but not limited to, email,
chat logging, text messaging and voicemail;
- 8) Cannon digital camera or other similar camera;
- 9) Commercially or privately made DVD or VHS tape to include but not limited to the movie
titled "Super Bad".
- 10) Controlled substances, in particular, Marijuana, Percocet and Methadone.

- 11) Narcotics paraphernalia, including materials for packaging, cutting, weighing and distributing narcotics, including but not limited to scales, baggies and heat sealers.
- 12) Weapons used for the protection of Controlled Substances including but not limited to, guns, knives, and explosives.
- 13) Safes, lock boxes and other security containers used to conceal and/or protect Controlled Substances, weapons, documents and/or proceeds from the sale of Controlled Substances.
- 14) United States currency and coin.

And that the said affiant verily believes the above evidence is concealed in or about a particular house, place or vehicle to-wit:

1) 5210 S. State #4, Tacoma, Washington, a multiple unit multiple level care facility, the main building is blue in color, unit #4 is located on the east side of the building on the lower level and is constructed of brick, the door to unit #4 is accessed through an interior hallway, the number 4 is affixed to the door.

2) A four door red 1994 Honda Civic bearing the Washington State license plate 328XAD.

The above said items are material to the investigation or prosecution of the above described felonies for the following reasons: Rape of a Child Third Degree to include the items listed to hold as evidence as necessary for the prosecution of said felony.

In said county and state: that your affiant's belief is based on the following facts and circumstances:

A student at Wilson High School, Cori Hilton, had concerns about the safety of her two friends, Holly Tharp and Victoria Newell. Cori notified her father, Todd Hilton, about the things she has heard and together they informed the principal. Cori explained there is a large black male in his 40's, bald with a large build that goes by the name "House". "House" has been supplying alcohol and marijuana to the Wilson High School students. Cori stated for the last 2-3 weeks Holly and Victoria have been hanging out with "House" on a daily basis. He picks them up at the corner of N.11th and Orchard St. at approximately 1500 hours.

After being told about this situation Todd Hilton went to school and observed the corner of N.11th and Orchard St. He observed a red Honda Prelude pass by him several times before stopping at the corner. The vehicle was being driven by a black male and there was a white female passenger. A second white female got into the vehicle and they drove away. Todd copied down the vehicle's plate, WA 328XAD. Cori told him later the vehicle was being driven by "House", Holly was the passenger and Victoria was the one they picked up. Cori had seen Victoria with marijuana earlier in the day. Victoria

admitted she was selling the marijuana for "House" and asked her if she wanted to buy some.

On 05/26/08 I spoke with both of Holly's parents, Steve Tharp and Mitzi Lowe. They both stated there has been a definite change in Holly recently. She has started skipping school, using foul language towards them, disrespecting them, going out at night, smoking marijuana and drinking alcohol. Mitzi told me she took away Holly's cell phone and found a person in her contacts named "Pappa". She did not know the associated phone number but told me the phone is in her name and she would provide the billing records to me.

Mitzi provided the aforementioned cell phone records to me. The phone, AT&T 253-212-6129, is in the name of Merle Lowe, her current husband, and is the cell phone Holly had been using. I noted several incoming calls from 253-306-5407. Mitzi stated this was the number of "Papa" in Holly's contacts.

I found a Tacoma Police report in which Jeffrey Randall is listed with an alias of "Big Papa". (072461100) I also located two Tacoma Police reports in which Jeffrey Randall's phone number is listed as 306-5407. (073051440 and 080300742)

I interviewed Holly and she denied knowing anyone named "House". She stated she was currently using marijuana and Percocet. She gets those drugs from "people she meets." Holly denied she was selling drugs for anyone or having sex with anyone that fit the given description of "House".

On 05/26/08 I contacted the registered owner of WA# 328XAD, Portia Kimbrough. Portia told me her brother, Jeffery Randall, has been driving the vehicle for the last three months. She told me his birthday is 02/05/68 and that he is 5-5 and well over 300 pounds. He is currently staying in an adult family home near the Tacoma Mall.

On the morning of 05/27/08 I was contacted by Mitzi and she related the following story: Last night at approximately 2200 hrs a white male named Phillip Macdonald knocked on her door. He told Mitzi and Merle that his sister had been raped by this "House" guy and Mitzi invited him inside. She and Merle talked to him for approximately 15 minutes. (Holly was sleeping upstairs.) Phillip was crying and seemed sincere. When the conversation concluded they offered Phillip a ride to the bus stop. He refused and said that he had some friends waiting for him in the area. Mitzi stated Phillip was approximately 19 years old, 6-0, slender, strawberry blonde hair and had on a grey hoody. (Holly told her later Phillip is the ex-boyfriend of Cori.)

Mitzi decided to wake Holly up and confront her with this new information. Upon telling her what had just happened Holly "freaked out." She said that Phillip was one of "House's people" and Holly became very scared for the family's safety. She said everyone was in danger and they needed to get out of the house. Mitzi stated Holly was in complete panic. They phoned Victoria and she told them she was in University Place.

Mitzi, Merle and Holly picked her up and brought her to her house. Holly's dad met them at Victoria's house.

While at Victoria's house Holly and Victoria admitted to each having sex with House on two different occasions. They said it all started about two months ago when "House" showed up at a party and he had drugs with him. The girls stated they just started "rolling with him". The two girls also stated that "House" has "people" that rough up people who get in his way. Recently he flipped out at a family barbecue and shot the place up.

On 05/27/08 I contacted Linda Hamilton who related the following: Victoria had recently told her she had a babysitting job and would leave the house every night at 2200 hrs. She would return at approximately 0300 hrs. After several nights Linda confronted Victoria about her babysitting job. Shortly after that a lady phoned Linda and claimed to be the person Victoria was babysitting for. Linda has since learned Victoria was not babysitting but meeting with "House" during that time. Victoria has recently had unexplained money that she has used to go shopping with. Linda stated that a couple of weeks ago she found a poem that had been written by Victoria. The poem describes a rape and Linda spoke with Victoria about it. She became very angry with her mother for looking at her personal material. Victoria told her the poem was about a friend but has since said the poem is about her and "House".

Linda said Victoria told her she has had sexual intercourse with "House" on two different occasions. He told her that if she told anyone he was having her sell pot and having sex with him he would hurt her and her family. Victoria told Linda she had no idea how bad he manipulated them. (Referring to herself and Holly.)

Holly Tharp-Forensic Interview

On 06/05/08 Det. Baker and I observed Holly's forensic interview from an adjacent observation room. The interview was conducted by trained forensic interviewer Cornelia Thomas. The entire interview was recorded on DVD.

Holly presented herself well and promised to tell the truth. Holly admitted she lied to me when first interviewed about this case. She lied because she was scared of being killed by "House" and his "goons". She identified "House" as being Jeffrey Randall and knows his name because she saw mail addressed to him while she was in his car. She described "House" as being thirty, gross, ugly, fat and the most repulsive thing you could ever imagine.

Holly described "House's" car as being a 1994 red four door Honda Civic with a broken trunk. She said he used to keep his drugs in the trunk until it broke. He now keeps the drugs in a blue backpack in the car. "House" and Holly used the vehicle to deliver drugs.

During the interview Holly disclosed sexual intercourse with "House" on two different occasions. Both incidents took place in his room in what she described as an old folks home for crack heads. The room is a studio type apartment within a "big old blue house".

She said the house is located on Railroad St. near the Shell station at 56th and Tacoma Mall Blvd. Holly said "House" would put her through tests to see if she was loyal to him. Holly had to kiss him and sleep with him to prove her loyalty. If she didn't sleep with him he would put her on "restriction" which meant he would cut her off and not let her see her friend, Victoria Newell.

"House" provided Holly alcohol, marijuana, Percocet and methadone. She stated she sold drugs for him, weighed them and packaged them. She said "House" sells a lot of drugs to kids and is known around Wilson High School as "the weed man."

Holly disclosed sexual intercourse in which "House" put his penis inside her vagina. She stated the he was unable to get it inside her on the first attempt and made her get up to get some baby oil. She stated it hurt and she cried the entire time. He put her legs up near her shoulders and asked her why she was crying. "House" made her look at him the entire time. Holly also disclosed "House" kissed her, grabbed her boobs (once leaving a bruise), put his finger inside her vagina, put his mouth on her vagina and made her perform oral sex on him. The second time it happened "House" "came" and it went all over the bed near her buttock.

Holly said she had sex with "House" for money, free weed and alcohol. She said "House" always threatened to cut her and told her he could have her killed.

"House" knew she was only fifteen years old because she told him having sex with her was wrong because of her age.

Holly began to cry when she talked about the sexual intercourse with "House".

Victoria Newell-Forensic Interview

On 06/05/08 Det. Baker and I observed Victoria's forensic interview from an adjacent observation room. The interview was conducted by trained forensic interviewer Cornelia Thomas. The entire interview was recorded on DVD.

Victoria was reserved and somewhat irritated. She promised to tell the truth and said she didn't want this to happen to anybody else. Victoria believes "House's" real name is Jeff Randall because her friend Holly saw his mail once. She thought his birth name might be Tommy. His Myspace account is titled "JR". Victoria disclosed having sexual intercourse with "House" on two different occasions. Both occasions occurred inside his apartment in the halfway house.

She described "House's" vehicle as being a red Honda Civic that is really loud. The front panel on the driver's side is black. "House" drove Victoria around in the vehicle to deliver marijuana. At one time while they were in the vehicle "House" told Victoria to take her shirt off and show him her breasts which she did.

Victoria stated "House's" cell phone number is 253-306-5407.

Victoria met "House" when a friend of hers called him for a ride. Victoria stated she was at a party and got humiliated when she was pushed into a pool. She told "House" about the incident and he told her if she hung out with him she would get respect and nobody would do something like that to her again. She began selling weed for him and he provided her with marijuana and alcohol.

Victoria said "House" guessed her age at 16-17 years old but she told him she was only 15 and he was "cool with that". This conversation took place prior to any sexual activity.

Victoria stated "House" would put her through tests to be in his group. One time he made her give him a kiss and told her if she didn't he would take her home and everyone would treat her like shit again. While at his apartment and lying on his bed they watched the movie "Super Bad". He told her to take off her clothes for the "final test." She started crying and he told her to take off her clothes a second time. She said he is very big and scary so she complied. He told her to get up and get him some baby oil which he put on his penis. Once her clothes were off he got on top of her, opened her legs. (Almost doing the splits) and started having sex with her. She started to cry and he asked her why she was crying. Victoria described sex as his penis being inside her vagina. She said it felt gross and hurt. During the sex she had her eyes closed. He made her open them and stare at him.

Victoria told "House" not to "cum" inside her. He replied, "Are you serious? Adults don't get kids pregnant."

The second time he wanted to have sex with her she told him no and he got "really pissed" and yelled at her so she complied. Semen came out of his penis and got between her legs. She used a towel to clean the semen off.

Victoria said "House" is really good at blackmail and told her if she said anything to anyone he would kill her. Victoria became emotional and cried when speaking about the sex.

On 06/10/08 I located "Houses" residence, the care facility described by Holly and Victoria. The address is 5210 S. State St. and is called the Harmel Care Facility.

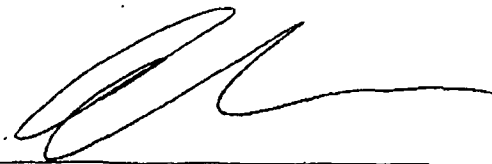
On 06/16/08 I contacted Victoria so she could further describe the location of "House's" room at the care facility. She stated his room is in the lower brick portion of the building that faces S. State St. It is accessed through an interior hallway and is the fourth door on the right hand side.

On 06/17/08 I contacted Tasha, staff at Harmel Care Facility, 5210 S. State; she stated Jeffrey Randall lives in room #4 within the facility. She pointed the door out to me. I noted the location and description matched the one given to me by Victoria. I have recently observed Jeffrey's vehicle, 328XAD, parked at the facility.

Training and experience;

Your affiant has been a City of Tacoma Police Officer for over seventeen years. Your affiant attended and completed the Washington State Criminal Justice Training Commission Academy. Your affiant has worked in several different units within the Tacoma Police Department including Patrol, The Proactive Response Team, The Special Investigations Division, (Narcotics and Vice) and the Special Weapons and Tactics Team. Your affiant has attended basic narcotics officer's investigative course along with continuing education in drug trafficking, manufacturing and selling through the California Narcotic Officers Association. Your affiant has attended the Reid Technique of Interviewing and training in recognizing child abuse injuries. Your affiant is currently a detective assigned to the Special Assault Unit.

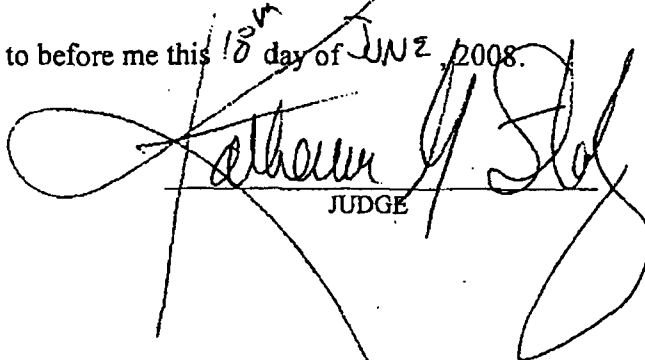
Based on all of the foregoing information your affiant is requesting judicial permission to search said apartment which is believed to contain evidence of Rape of a child Third Degree, in order to obtain the evidence requested.



Steven Reopelle #472

Presented by: Steven Reopelle #472

SUBSCRIBED AND SWORN to before me this 18th day of JUN 2, 2008.


JUDGE

FILED
IN COUNTY CLERK'S OFFICEA.M. JUN 19 2008 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTYIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY
SEARCH WARRANT
(Evidence)

STATE OF WASHINGTON)

) ss. No. 08 1-50565-2
County of Pierce)THE STATE OF WASHINGTON TO THE SHERIFF OR ANY PEACE OFFICER OF
SAID COUNTY:That on or about the 13th day of May, 2008, in Pierce County, Washington, a felony, to-wit:Rape of a Child Third Degree, was committed by the act, procurement, or omission of another,
and that the following evidence, to-wit:

- 1) Crime scene processing to include, but not limited to, photographing, diagramming, video
taping and measuring;
- 2) Collection of trace evidence to include, but not limited to, blood, hairs, fibers and any other
biological fluids;
- 3) Indicia of occupancy, residency, and/or ownership of the premises described in the
Search Warrant, including, but not limited to, utility and telephone bills, canceled
envelopes, and keys.
- 4) Baby oil or similar lubricants;
- 5) Photographs as defined by RCW 9.68A.011, or images depicting minors, whether
clothed or unclothed, engaged in sexually explicit activity, as defined by RCW
9.68A.011;
- 6) Journals, notebooks, diaries, notes and/or letters that are sexually explicit and detail
sexual exploits and/or fantasies, specifically those documents which the participants are
minors;
- 7) Personal communications in electronic or written form including, but not limited to, email,
chat logging, text messaging and voicemail;
- 8) Cannon digital camera or other similar camera;
- 9) Commercially or privately made DVD or VHS tape to include but not limited to the movie
titled "Super Bad".

- 10) Controlled substances, in particular, Marijuana, Percocet and Methadone.
- 11) Narcotics paraphernalia, including materials for packaging, cutting, weighing and distributing narcotics, including but not limited to scales, baggies and heat sealers.
- 12) Weapons used for the protection of Controlled Substances including but not limited to, guns, knives, and explosives.
- 13) Safes, lock boxes and other security containers used to conceal and/or protect Controlled Substances, weapons, documents and/or proceeds from the sale of Controlled Substances.
- 14) United States currency and coin.

These items being material to the investigation or prosecution of the above described felony and that said Detective Steven Reopelle #472 verily believes that the described evidence is concealed in or about a particular premise(s) and vehicle to wit:

- 1) 5210 S. State #4, Tacoma, Washington, a multiple unit multiple level care facility, the main building is blue in color, unit #4 is located on the east side of the building on the lower level and is constructed of brick, the door to unit #4 is accessed through an interior hallway, the number 4 is affixed to the door.
- 2) A four door red 1994 Honda Civic bearing the Washington State license plate 328XAD.

THEREFORE, in the name of the State of Washington, you are commanded that within ten days from this date, with necessary and proper assistance you enter into and/or search the said house, person(s), place or thing, to-wit:

- 1) 5210 S. State #4, Tacoma, Washington, a multiple unit multiple level care facility, the main building is blue in color, unit #4 is located on the east side of the building on the lower level and is constructed of brick, the door to unit #4 is accessed through an interior hallway, the number 4 is affixed to the door.
- 2) A four door red 1994 Honda Civic bearing the Washington State license plate 328XAD.

And then and there diligently search for said evidence, and any other, and if same, or evidence material to the investigation or prosecution of said felonies or any part thereof, be found on such search, bring the same forthwith before me, to be disposed of according to law. A copy of this warrant shall be served upon the person or persons found in or on said house or place and if no person is found in or on said house or place, a copy of this warrant shall be posted upon any conspicuous place in or on said house, place, or thing, and a copy of this warrant and inventory shall be returned to the undersigned judge or his agent promptly after execution.

GIVEN UNDER MY HAND this 18th day of June, 2008.


Judge

1 MS. PIERSON: Right.

2 THE COURT: -- physical evidence, but also
3 potentially exclude some statements that were made by
4 Mr. Randall. And having heard now the testimony of the two
5 officers, or the one officer and the one detective, I presume
6 that we're going to be mixing a little bit the issues of 3.5
7 and 3.6. Ms. Pierson is shaking her head and Ms. Sanchez is
8 saying yes.

9 MS. PIERSON: No, because the State -- my error
10 thinking that Eric Chell is a detective, he's not. We heard
11 his testimony, no pretext, the pretext goes away. That
12 leaves us with the Arizona v. Gant issue however, but the
13 State has something to say about that.

14 THE COURT: Conceded --

15 MS. SANCHEZ: Correct.

16 THE COURT: -- in the briefing.

17 MS. SANCHEZ: Right. And I want to make it clear
18 that there are kind of two separate categories of statements
19 and there's two separate categories of evidence the defense
20 has raised. Regarding the stop, the evidence that was seized
21 is incident to his arrest, so only in the interior
22 compartment of the vehicle and the statements that he made to
23 Officers Chell or Koskovich. I'm conceding that those would
24 not come in. Those were all suppressed or they would be at
25 this point under Gant, but he also pled guilty in Tac Muni to

1 the possession of that marijuana. I don't intend to use any
2 of that.

3 However, the evidence that was seized from the trunk a
4 couple of days later pursuant to the search warrant, that I
5 am arguing is admissible, and the statements that he made to
6 Detective Reopelle in the jail I am arguing that those are
7 admissible.

8 THE COURT: Right. So we still have 3.6 issues
9 unless the defense is conceding the 3.6 issue on the trunk
10 materials pursuant to the search warrant.

11 MS. PIERSON: Not necessarily.

12 THE COURT: Well, based on your questions I didn't
13 think you were conceding that issue. So what I would like to
14 focus on tomorrow is the 3.6, on the material seized from the
15 trunk which includes the blue backpack, the Vicodin, the
16 traces of marijuana, and then the 3.5 issues which are the
17 statements made in the interview on March -- June, June 19th,
18 2008, with Detective Reopelle.

19 MS. PIERSON: Thank you.

20 THE COURT: And so we'll talk about that but then we
21 will also take up the limine issues. If there are any from
22 the defense let me know that, but I understand there are some
23 from the prosecution.

24 MS. PIERSON: I was intending to write up a bit of a
25 trial brief with motions in limine, and since I've been back

1 That's going to be a face-to-face contact; I mean, that's our
2 rule and that's -- it doesn't happen every time, but that's
3 what we're supposed to do, at least a phone call. But that
4 person at arraignment is told, you now have an attorney, I've
5 appointed the Department of Assigned Counsel. And that goes
6 a long way toward encouraging that person to understand that
7 he now has a mouthpiece and someone who can defend him.

8 I couldn't find any cases on point because I've never
9 seen such a situation where the Prosecuting Attorney's Office
10 actually delays an arraignment to let the cops go talk to
11 somebody. And I'm just appalled by it, I think it's due
12 process, I think it comes within everything and the
13 appropriate remedy is just as it would be on a 3.6 issue for
14 an illegal search and seizure, you suppress the unlawfully
15 obtained evidence. There is no doubt in my mind or in my
16 heart and soul that we just can't let prosecuting attorneys
17 do that. Thank you.

18 THE COURT: Thank you. Well, that's the critical
19 issue in this hearing because I find with regard to the
20 complaint for search warrant that there was more than
21 adequate probable cause within the document itself to justify
22 a search both of the residence and the car. And I've read it
23 a couple of times and I feel strongly that that's the case.
24 This is a very complete complaint which had more detail in it
25 than would have been necessary to justify probable cause.

1 What I do find interesting in the complaint which
2 pertains to the next issue, and that is the sequence of dates
3 on which the investigation appears to have been complete, at
4 least in -- well, I shouldn't say complete because Detective
5 Reopelle specifically said his investigation wasn't complete
6 necessarily when he went to get the search warrant, but it is
7 found in the last few entries that he puts in.

8 He went himself and located Mr. Randall's address on
9 June 10th; he contacted one of the alleged victims whose
10 first initials is V on June 16th, 2008 to get further
11 description and detail of the location where she allegedly
12 was and where some of this activity took place; and then he
13 goes on June 17th to speak with -- or he may not have gone
14 there -- no, he did go there because he speaks to staff at
15 the facility and she points to the door and he confirms that
16 it's consistent with the alleged victim's information.

17 So as of June 17th, which is the day before he applies
18 for the search warrant because a search warrant is signed on
19 June 18th, and, of course, in this length of search warrant
20 and complaint the search warrant takes some time. I expect
21 that he took some time in preparing this, putting it
22 together, and then the interview takes place on June 19th.
23 So, again, I think those sequence of dates are interesting in
24 terms of how I look at the second issue, which is whether or
25 not the statements should be suppressed based on the conduct

1 of the detective in requesting a delay of the arraignment and
2 the prosecutor's agreement to that and then setting it over
3 one day.

4 What I first want to go through is the -- what I
5 consider to be undisputed facts. The undisputed facts have
6 to do with the investigation, the sequencing of his
7 investigation, the sequence of securing the complaint, the
8 fact that the arraignment was set over. So all of those
9 dates I don't think I have to lay that out, I think that
10 we're all on the same page on what that information is. What
11 is disputed is whether there was some conspiracy as between
12 the detective and the Prosecutor's Office to set it over a
13 day for the purpose of interviewing Mr. Randall without the
14 benefit of notifying counsel, notifying counsel.

15 And that's a key difference too because once the Court
16 finds that DAC is appointed at an arraignment, I presume that
17 any detective or any prosecutor is not going to go and
18 contact Mr. Randall without notification to the Department of
19 Assigned Counsel regardless of the fact that perhaps it was
20 Mr. Halstead or Ms. Contris who sat in at the arraignment and
21 that they are not the assigned counsel per se, but that the
22 prosecutor and/or the detective would have to contact DAC and
23 say, we're about to go interview Mr. Randall and are you
24 going to be present or do you want to be present? Because
25 it's at the point at which the Court finds and assigns DAC

1 that Mr. Randall has counsel, and everyone has to go through
2 the attorney in order speak with Mr. Randall.

3 So it is disputed as to why the -- well, I shouldn't
4 say that. There has been no evidence presented to the Court
5 that it was some sort of conspiracy or it was for the purpose
6 of allowing the detective to speak with Mr. Randall outside
7 the presence of counsel; so I consider that a disputed fact.
8 What is not disputed is that it was set over, that the
9 detective asked that it be set over, that there must have
10 been some agreement with the prosecutor's office to set it
11 over because it was set over to June 20th.

12 Now I will tell you I don't feel prepared to make the
13 ultimate ruling, quite frankly. I want to go and read this
14 case which I've not read yet. Although I did read the
15 State's brief, I have not read this Visitation case, and I
16 want to do my own research. I'm sure that it was adequately
17 researched, I don't want to suggest that it was not, but
18 often when I do my own research and I start reading some of
19 the analogous cases, it starts to formulate in my brain what
20 really the law is and what direction an appellate court might
21 take in the event that these facts were presented.

22 So I want to do that and I've not done it yet and I'm
23 not prepared to give you a ruling on this other than to say
24 that there is no question, undisputed that Mr. Randall was in
25 custody, that this was a custodial interrogation and that he

1 an oral ruling just the way I've just done with the other
2 issues, but it would be in written form in E-mail. And I
3 would do it before the end of today so that you have the
4 benefit of that decision for purposes of getting ready for
5 trial and potentially negotiating the case.

6 So -- and as I say, normally I would do that through
7 Candy, I would prepare something in my handwriting, she'd
8 type it up for me and then she would e-mail it to you, but
9 she's not going to be here this afternoon so I think I will
10 just do it in an E-mail form. But just so that you know,
11 Counsel, that will become a formal part of the record because
12 I want to make sure that it's in the court file.

13 MS. SANCHEZ: Understood.

14 MS. PIERSON: Excuse me.

15 (Ms. Pierson discussing with the defendant.)

16 MS. PIERSON: I wasn't present at the arraignment,
17 Mr. Randall's telling me something -- on June 19th?

18 THE DEFENDANT: Yeah.

19 MS. PIERSON: Would the Court allow us to reopen? I
20 hadn't heard this.

21 THE COURT: Counsel, any objection?

22 MS. SANCHEZ: Without the benefit of knowing what it
23 is that we're reopening for --

24 MS. PIERSON: Mr. Randall is telling me that he was
25 taken to court on June 19th when the arraignment was

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF PIERCE

3
4
5
6 STATE OF WASHINGTON,

7 Plaintiff,

8 v.

9 JEFFREY LAMONT RANDALL,

10 Defendant.

)
)
)
) Superior Court
) No. 08-1-02916-8
) Court of Appeals
) No. 41916-5-II
)
)
)

11
12 REPORTER'S CERTIFICATE

13
14 STATE OF WASHINGTON)

15) ss
16 COUNTY OF PIERCE)

17 I, Lanre G. Adebayo, Official Court Reporter in the
18 State of Washington, County of Pierce, do hereby certify that
19 the foregoing transcript is a full, true, and accurate
20 transcript of the proceedings and testimony taken in the
21 matter of the above-entitled cause.

22 Dated this 4th day of October, 2011.

23 G. Adebayo
24 LANRE G. ADEBAYO, CCR
25 Official Court Reporter
CCR #2964

ORIGINAL

APPENDIX “F”

State’s Response Brief

NO. 41916-5

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JEFFREY RANDALL, APPELLANT

**Appeal from the Superior Court of Pierce County
The Honorable Susan K. Serko**

No. 08-1-02916-8

BRIEF OF RESPONDENT

**MARK LINDQUIST
Prosecuting Attorney**

**By
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Deputy Prosecuting Attorney
WSB # 38725**

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WPIC 4.25..... 2

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the use of general testimony to establish defendant's practice of employing minors to sell his marijuana comply with due process when it was sufficiently specific to enable his defense?
2. Were defendant's convictions for unlawful delivery of a controlled substance and involving a minor in a transaction to deliver a controlled substance supported by sufficient evidence when the evidence established he was a forty year old man who employed two fifteen year old girls to sell his marijuana?
3. Was the omission of a *Petrich*¹ instruction harmless error when defendant's criminal acts were collectively established by uncontroverted evidence?

¹ 101 Wn.2d 566, 570, 572, 683 P.2d 173 (1984) (When the State presents evidence of several acts that could form the basis of one count charged, either the State must elect the act it is relying upon or the court must instruct the jury to agree on a specific criminal act).

4. Are the findings of sexual motivation supported by the record when it shows defendant's marijuana deliveries were partially aimed at drawing the victims into a sexual relationship?

5. Should defendant's claim of a *Bashaw*² error be rejected when it was not preserved for review and is not supported by the record?

B. STATEMENT OF THE CASE.

1. Procedure

On January 13, 2011, the Pierce County Prosecutor's Office filed a third amended information charging appellant, Jeffrey Lamont Randall ("defendant"), with four counts of third degree rape of a child (Counts I-IV), two counts of involving a minor in a transaction to deliver a controlled substance (Counts V-VI), and two counts of unlawful delivery of a controlled substance to a person under the age of eighteen (Counts VII-VIII). CP 223-226. The State alleged defendant committed Counts VII and VIII with sexual motivation. CP 223.

The Honorable Susan K. Serko presided over the trial. RP 1. Defendant proposed a *Petrich* instruction for each count.³ CP 228-233; RP 1727-1737. The State objected to the *Petrich* instructions, arguing the charged offenses were part of a continuing course of conduct that did not

² 169 Wn.2d 133, 146-147, 234 P.3d 195 (2010) (Juror unanimity is required to find the presence of a penalty enhancing-fact, but is not required to find its absence).

³ WPIC 4.25; *see also Petrich*, 101 Wn.2d at 572.

require election. RP 1734-1741. The trial court agreed with the State and did not give the instructions. RP 1734-1735, 1741, 1813-1881; CP 270-304. The jury convicted defendant of two counts of involving a minor in a transaction to deliver a controlled substance (Counts V-VI) and two counts of unlawful delivery of a controlled substance to a person under the age of eighteen (Counts VII-VIII). CP 309-312. The jury concluded defendant committed the unlawful deliveries with sexual motivation. CP 313-314. Defendant was acquitted of the child rape counts. CP 305-308.

The Court imposed sentence on March 18, 2011. CP 438-455. Defendant's offender score was 10 as to Counts V-VI and 12 as to Counts VII-VIII. CP 442. Defendant's standard range was 100 to 120 months for each offense. CP 442. The court was statutorily required to impose a consecutive 48 month sentence for the sexual motivation enhancements. CP 441-442; RCW 9.94A.533. The Court imposed a high end sentence of 168 months. CP 441-442. Defendant filed a timely notice of appeal on March 24, 2011. CP 493-519.

2. Facts

Several Wilson High School students regularly congregated at a Tacoma bus stop across the street from the school during the spring semester of 2008. RP 223-226, 286-287, 547-552, 632, 634-636, 645, 671, 756-757, 761-762, 829, 846, 1130, 1322-1334, 1371-1372, 1387,

1518-1527. The students referred to that location as “smoker’s corner.”⁴ *Id.* Students went there to socialize while smoking cigarettes and, less frequently, marijuana. RP 1326-1327. Several students also went to “smoker’s corner” to purchase marijuana. RP 1327. H.T. and V.N. were fifteen year old girls known to frequent “smoker’s corner” after school. RP 632-635, 637-638, 643-644, 756, 767, 1327. H.T. was enrolled at Wilson High School at the time. RP 632-635, 637-638, 756-759. V.N. was a former Wilson High School student who had transferred to Oakland High School. *Id.*

Defendant was forty years old in March, 2008. RP 1626. Defendant began associating with the adolescent friends of H.T. and V.N. around that time. RP 223-226, 286-287, 547-552, 632, 634-636, 645, 671, 756-757, 761-762, 829, 846, 1130, 1322-1334, 1371-1372, 1387, 1518-1527. Most of the kids variously knew defendant by the aliases “House” and “Weed Man;” defendant had H.T. and V.N. refer to him as “Papa.” RP 636-637, 733, 761, 1328. Defendant became known as a person who would purchase alcohol for kids, sell marijuana to them, and provide them transportation. RP 646-648, 767, 778, 1330-1331, 1334. Several kids began selling marijuana “through” defendant; this meant they sold defendant’s marijuana to others on his behalf. RP 898, 1333.

Defendant knew H.T. and V.N. were only fifteen years old. RP

⁴ The corner at Orchard and 11th was described as both “The Corner” and “Smoker’s

670, 782. V.N. felt as if she was being treated poorly by her peers. RP 777-778. Defendant encouraged V.N. to depend on him. RP 776. Defendant told V.N. the other kids would respect her if she spent time with him. RP 670, 777-778, 782. Defendant convinced V.N. to smoke marijuana with him. RP 769-770. V.N. felt fortunate defendant took an interest in her. RP 801. They discussed the possibility of V.N. selling marijuana for him. RP 788. Defendant told V.N. he needed to trust her if she was going to deal his marijuana. RP 788. Defendant continued to raise the issue of trust as their relationship progressed. RP 788.

Defendant told V.N. she would have to pass a series of loyalty tests before she could sell his marijuana. RP 789. Defendant required a kiss as V.N.'s first demonstration of loyalty. RP 789. Defendant later required V.N. to take her shirt off. RP 790-791. At a different meeting defendant told V.N. she had to perform oral sex on him. RP 793. V.N. testified defendant required sexual intercourse as a final demonstration of her loyalty. RP 808-816. Defendant congratulated V.N. for passing her final loyalty test when he was finished and told her to keep it a secret. RP 795-796, 817-818. V.N. testified defendant forced her to have sex with him a second time approximately two weeks later when she was intoxicated. RP 818-828, 833.

H.T. also thought of herself as a "looser" who was "lucky" to

Corner." RP 643, 1325-1327.

spend time with defendant because “everybody knew him” and she “wanted to be known too.” RP 665, 750. Defendant told H.T. she needed to earn his trust by proving her loyalty to him. RP 663. Defendant required H.T. to remain continually available to assist in his marijuana sales. RP 663. Defendant began asking H.T. sexual questions about her bathing practices. RP 670. H.T. testified defendant “raped” her on two occasions after giving her marijuana to smoke. RP 670-678, 683-685-690, 1083-1084, 1137. Defendant told another adolescent he supplied with marijuana that he had sex with V.N. and H.T. RP 1373, 1387, 1383.

H.T. and V.N. regularly participated in defendant’s marijuana sales. RP 650-651, 659-662-663, 720-722, 772-773, 779-781, 837, 885, 894-895. Their participation began in March, 2008, and ended in May, 2008. RP 632, 634-636, 671, 756-757, 762, 829, 846, 1130. They were the only girls working for defendant. RP 719-720, 779. Defendant referred to H.T. as “Mama” and V.N. as “Little Mama.” RP 665, 837. Defendant picked up H.T and V.N. from school nearly every day. RP 650, 654, 774, 780, 1333-1335. The three of them delivered marijuana from defendant’s car to multiple locations in Tacoma, Lakewood, Spanaway, and elsewhere, but always in Washington. RP 650-651, 659-662-663, 720-722, 772-773, 779-781, 837, 885, 894-895. The marijuana was kept in a blue backpack between sales. RP 651, 653, 770.

H.T. typically arranged the marijuana deliveries to her friends and prepared defendant’s marijuana for sale. RP 651-653, 658. Defendant

regularly provided H.T. alcohol when they were together. RP 657-658, 660. H.T. worked until she had to return home in the evening; she then left her house without permission “every night” and continued selling marijuana with defendant. RP 651, 655, 659, 661, 780. They sold marijuana to roughly twelve people a day, which resulted approximately \$140.00 of revenue per day. RP 723. Meanwhile, V.N. arranged marijuana sales to kids at Wilson and Oakland High School, often with H.T.’s assistance. RP 779-780, 872-873, 874, 896, 965. Defendant compensated them with marijuana and a small portion of the proceeds. RP 722, 724, 779-780, 785, 870, 885, 898-899. Defendant punished the girls for perceived missteps by “belittle[ing]” them and withholding marijuana. RP 799, 801. Defendant also told them he had “goons” (dangerous individuals) to send after disloyal people. RP 664, 692, 743, 802-805, 881-882, 885-886. This pattern continued for several weeks. RP 723.

Wilson High School student C.H. reported defendant’s activities with V.N. and H.T. to her father, Todd Hilton (“Hilton”). RP 540-545, 1328, 1337, 1348-1349. Hilton investigated the report by surveilling V.N. at a bus stop on May 13, 2008. RP 546, 549, 1351. Hilton watched V.N. enter defendant’s car. RP 547-548, 551-552. Hilton and his daughter reported their concerns to the Wilson High School Principal on May 13, 2008. RP 549, 1351. The principal immediately notified the police. RP 1351.

Detective Reopelle was assigned to investigate on May 13, 2008. RP 1567, 1573. H.T. initially disavowed any involvement with defendant. RP 696, 1655-1656. H.T. and V.N. subsequently disclosed their participation in the marijuana sales as well as their sexual encounters with defendant. RP 1582-1583, 1624. Police executed a warrant to search at defendant's residence. RP 1588. A blue backpack containing marijuana was located in the trunk of defendant's car. RP 1209, 1601-1602. Defendant's telephone records were also obtained. RP 1603, 1617. The records revealed sixteen calls to H.T.'s telephone number and twelve to V.N.'s telephone number. RP 1603, 1617. A bottle of baby oil was located in defendant's room; this corroborated the victims' account that defendant used baby oil as a lubricant during the reported sexual intercourse. RP 1625.

Defendant was interviewed by Detective Reopelle following his arrest on June 16, 2008. RP 1188-1190, 1597. Defendant "put his head in his hands [and] turned away" when Detective Reopelle asked about the victims. RP 1599. Defendant said he met them through "some people that he dealt with." RP 1598. Defendant admitted he "rolled" with them. RP 1599. Defendant admitted they had been in his car. RP 1599. Defendant said he was shocked by the accusation he had slept with minors; at that time Detective Reopelle had not given defendant any information about the victims' respective ages. RP 1600-1601.

Defendant called one witness at trial. RP 1704-1726. Defendant's

witness, Tasha Lewis (“Lewis”), was a manager at the Har-Mal facility where he lived. RP 1705. Lewis said she was not aware of defendant bringing anyone into the facility after hours. RP 1704-1723. Lewis conceded on cross-examination that people could be secreted into the building without her knowledge. *Id.*

C. ARGUMENT.

1. THE USE OF GENERAL TESTIMONY TO ESTABLISH DEFENDANT'S PRACTICE OF EMPLOYING MINORS TO SELL MARIJUANA COMPLIED WITH DUE PROCESS BECAUSE IT WAS SUFFICIENTLY SPECIFIC TO ENABLE HIS DEFENSE.

General testimony may be sufficient to support a conviction provided it is specific enough to enable the defendant's right to present a defense. *State v. Hayes*, 81 Wn. App. 425, 435-436, 914 P.2d 788 (1996) (citing *State v. Brown*, 55 Wn. App. 738, 741-742, 780 P.2d 880 (1989)). That right is accommodated without unfairly immunizing from prosecution offenders that subject victims to multiple crimes when the following three conditions are met:

- (1) The victim must describe the kind of act or acts with sufficient specificity to allow the trier of fact to determine what offense, if any, has been committed;
- (2) The victim must describe the number of acts committed with sufficient certainty to support each of the counts alleged by the prosecution;
- (3) The victim must be able to describe the general time period in which the acts occurred. The trier of fact must determine whether the testimony of the victim is credible on these basic points.

See *State v. Hayes*, 81 Wn. App. at 438 (citing *People v. Jones*, 270 Cal.Rptr. 611, 623, 792 P.2d 643 (1990)).

General descriptions of a defendant's usual criminal conduct can be specific enough to satisfy this three part test when they are limited to estimates of the number of incidents with general accounts about the

frequency of particular acts. *See Hayes*, 81 Wn. App. at 435, 438-439 (victim's testimony satisfied the three-part test when it implied vaginal penetration occurred at least four times, and up to two or three times a week, over a period of two years) (*citing Brown*, 55 Wn. App. at 741-742, 749).

Washington's appellate courts have upheld the use of general testimony because it is often unreasonable to require victims to pinpoint when repeated offenses occurred. *See Hayes*, 81 Wn. App. at 435-436 (*citing Brown*, 55 Wn. App. at 747; *State v. Ferguson*, 100 Wn.2d 131, 139, 667 P.2d 68 (1983)). For instance, victims are often incapable of providing exacting detail in cases in which a perpetrator regularly subjects them to substantially similar offenses over a protracted period of time. To require more than a general description of such a pattern of similar conduct would incentivize perpetrators to insulate themselves from prosecution by reoffending until they could be confident the sheer number of offenses had overwhelmed their victims' capacity to neatly compartmentalize a memory of each incident. *See generally Hayes*, 81 Wn. App. at 437 (*citing Brown*, 55 Wn. App. at 749; *People v. Obremski*, 207 Cal.App.3d 1346, 255 Cal.Rptr. 715, 719 (1989); *see also State v. Bobenhouse*, 166 Wn.2d 881, 885-886, 214 P.3d 907 (2009); *State v. Allen*, 57 Wn. App. 134, 135-136, 787 P.2d 566 (1990)).

Defendant's ongoing inclusion of H.T. and V.N. in his marijuana business was largely proved through the victims' general descriptions of

their illicit activities. RP 632-635, 637-638, 643-648, 650-663, 720-723, 756, 767-770, 772-774, 779-781, 788, 795-796, 817-818, 837, 872-874, 885, 894-896, 965, 1086, 1138, 1327, 1330-1331, 1333-1335. That level of detail was to be expected. Each victim was providing testimony about events that transpired three years before trial when they were fifteen years old. *Id.* The evidence supported an inference that their capacity to form detailed memories of each criminal act was compromised by the alcohol and marijuana defendant regularly provided them during the offenses. *Id.* The victims had also made concerted efforts to move on with their lives after defendant's crimes were interrupted by police. RP 702, 834. Thus, the combination of youth, routine intoxication, temporal and emotional distance, made defendant's victims comparable to the younger—yet unimpaired—juvenile victimized in *Hayes*, 81 Wn. App. at 427-429.

The evidence adduced at trial was still definite enough to satisfy *Hayes*' three part test. The testimony described the kind of acts that occurred with sufficient specificity to permit the jury to determine what offenses had been committed. Uncontroverted evidence established defendant was a forty year old man who paid two fifteen year old girls marijuana and money to assist him with his daily marijuana sales throughout Pierce County. RP 632-635, 637-638, 643-648, 650-663, 720-723, 756, 767-770, 772-774, 779-781, 788, 795-796, 817-818, 837, 872-874, 885, 894-896, 965, 1086, 1138, 1327-1331, 1333-1335, 1371-1372, 1387, 1518-1527, 1626, 1704-1726. That evidence provided the jury with

an adequate understanding of defendant's conduct to determine whether it was proscribed by the offenses properly defined in the trial court's instructions. CP 285 (Instruction No. 13),⁵ 290 (Instruction No. 18).⁶ The first prong of the *Hayes* test is satisfied.

The number of acts committed was also sufficiently defined to support each count. CP 223-226, 286-287, 293-294. Both victims said they physically participated in several marijuana sales a day over a period of weeks when they were fifteen years old; the evidence established defendant was forty years old at the time. RP 632-635, 637-638, 643-648, 650-663, 720-723, 756, 767-770, 772-774, 779-781, 788, 795-796, 817-818, 837, 872-874, 885, 894-896, 965, 1327, 1330-1331, 1333-1335, 1626. This amounted to at least one instance of each offense a day, per victim, for weeks; yet defendant was only charged with committing one count of each offense per victim. Each count was therefore amply

⁵ "A person commits the crime of Involving a Minor in a Transaction to Deliver a Controlled Substance when he or she knowingly compensates, threatens, solicits, or in any other manner, involves a person under the age of eighteen years in a transaction to unlawfully deliver a controlled substance, marijuana." "The phrase "in any other manner involves" includes: surrounding, enclosing, or drawing in a person under the age of eighteen in an unlawful drug transaction, or obliging a person under the age of eighteen to become associated with the drug transaction; or inviting, bringing, or attempting to bring, a person under the age of eighteen, to a drug transaction. Mere exposure of a minor to an unlawful drug transaction is insufficient." CP 289 (Instruction No. 17).

⁶ "A person commits the crime of Unlawful Delivery of a Controlled Substance to a Person Under the Age of Eighteen when the person is eighteen years of age or over and knowingly delivers to a person who is under eighteen years of age and at least three years the person's junior a controlled substance." "Deliver or delivery means the actual or constructive or attempted transfer of a controlled substance from one person to another." CP 292 (Instruction No. 20).

supported by the evidence. The requirement of *Hayes*' second prong has been fulfilled.

The victims were equally clear about when the offenses occurred. Defendant was charged with committing the offenses on or about the period between March 1, 2008, and June 4, 2008. CP 223-226, 286-287, 293-294. H.T. testified that the crimes occurred from about March, 2008, to the end of May, 2008. RP 632, 634-636, 671, 1130. V.N. similarly placed the incidents between March, 2008, and May, 2008. RP 756-757, 762, 829, 846. Several other witnesses corroborated the accuracy of that testimony. RP 547-548, 551-552, 1322, 1324, 1327-1329, 1333-1334, 1371-1372, 1387, 1518-1527. The police were alerted to defendant's activities with the victims on May 13, 2008. RP 549, 1351. The temporal component of the *Hayes* test is established.

At the same time defendant's due process right to present a defense was unaffected by the testimony's general quality. RP 1840-1872. Pinpointing the occurrence of each marijuana delivery was immaterial to the defense because defendant conceded the victims were selling marijuana. RP 1840-1872. Defendant presented a defense of general denial, arguing he was not the person responsible for providing marijuana to the victims. RP 1840-1872. Counsel contended the victims used defendant as a scapegoat when their own illicit activities were exposed. RP 1871. Defendant's claim that the evidence was too vague to support his convictions is not supported by the record.

2. DEFENDANT'S DRUG CONVICTIONS WERE
SUPPORTED BY SUFFICIENT EVIDENCE
THAT HE WAS A FORTY YEAR OLD MAN
WHO EMPLOYED TWO FIFTEEN YEAR OLD
GIRLS TO SELL HIS MARIJUANA.

“The State bears the burden of proving all the elements of the crime charged beyond a reasonable doubt.” *Id.* (citing *State v. Teal*, 152 Wn.2d 333, 337, 96 P.3d 974 (2004); *State v. McCullum*, 98 Wn.2d 484, 489, 656 P.2d 1064 (1983)). “The standard for determining the sufficiency of the evidence on appeal is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilty beyond a reasonable doubt.” *State v. Hermann*, 138 Wn. App. 596, 602, 158 P.3d 96 (2007) (citing *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). “In challenging the sufficiency of the evidence, the appellant admits the truth of the State’s evidence and all inferences that can be reasonably be drawn from it.” *Id.* (citing *State v. McNeal*, 145 Wn.2d 352, 360, 37 P.3d 280 (2002)).

“Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). At the same time the written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations; these should be made by the trier of fact, who is best able to observe the

witnesses and evaluate their testimony as it is given. *See State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed on appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1009 (1987)). Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

a. The Evidence Proved Defendant Involved Two Minors in a Transaction to Deliver Marijuana.

To convict defendant of Involving a Minor in a Transaction to Deliver a Controlled Substance as charged in counts V and VII, the jury had to find each of the following elements was proved beyond a reasonable doubt:

- (1) That during the time period between March 1, 2008, and June, 2008, the defendant involved [H.T. as to Count V and V.N. as to Count VI] in a transaction to deliver a controlled substance: marijuana;
- (2) That the defendant knew that the substance was marijuana;
- (3) That [H.T. as to Count V and V.N. as to Count VI] was a person under the age of eighteen years;
- (4) That the defendant knew [H.T. as to Count V and V.N. as to Count VI] was under the age of eighteen years; and
- (5) That the act(s) occurred in the State of Washington.

CP 286 (Count V, Instruction No. 14), 287 (Count VI, Instruction No. 15); RCW 69.50.4015.⁷ A person involves a minor in a transaction⁸ to deliver marijuana when that person knowingly compensates, threatens, solicits, or in any other manner involves a person under the age of eighteen years in a transaction to unlawfully deliver marijuana. CP 285 (Instruction No.285); RCW 69.50.4015; *see also State v. Flores*, 164 Wn.2d 1, 186 P.3d 1038 (2008); *State v. Hollis*, 93 Wn. App. 804, 812, 970 P.2d 813 (1999). The phrase “in any manner involves” includes:

surrounding, enclosing, or drawing in a person under the age of eighteen in an unlawful drug transaction, or obliging a person under the age of eighteen to become associated with the drug transaction; or inviting, bringing, or attempting to bring, a person under the age of eighteen to a drug transaction. Mere exposure of a minor to an unlawful drug transaction is insufficient.

CP 289 (Instruction No. 17); RCW 69.50.4015; *Flores*, 164 Wn.2d at 14-16, 24; *Hollis*, 93 Wn. App. at 812-818. “[T]he statute does not require the minor’s actual participation in the drug transaction: the minor’s

⁷ Wash. Legis. 2003 c 53 § 336, former 69.50.401(f) enacted under Wash. Legis. 1987 c 458 § 4.

⁸ “Transaction” is not defined in RCW 69.50. “Where a term used in a statute is not defined therein, [appellate courts] may rely on the ordinary meaning of the term.” *Hollis*, 93 Wn. App. at 811 (*citing State v. Edwards*, 84 Wn. App. 5, 10, 924 P.2d 397 (1996), *review denied*, 131 Wn.2d 1016, 936 P.2d 416 (1997); *see also Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). The ordinary meaning of “transaction” is “a compact or covenant...[or] a communicative ...activity involving two parties or two things reciprocally affecting or influencing each other [or] something that is transacted: as a business deal.” Webster’s Third New International Dictionary 2425 (2002); *see also* Blacks Law Dictionary, 8th Ed. 1535 (2004) (“The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract ... Something performed or carried out; a business agreement or exchange”).

culpability and actions—which are proscribed under other statutes—are inapposite for the purposes of the involving a minor in a drug transaction statute.” *Flores*, 164 Wn.2d at 12 (*citing Hollis*, 93 Wn. App. at 812) (internal quotation marks omitted).

Defendant involved H.T. and V.N. in transactions to deliver marijuana when he employed them in his daily marijuana sales for several weeks within the period set forth in the third amended information. RP 547-548, 551-552, 632-635, 637-638, 643-648, 650-663, 720-723, 756, 767-770, 772-774, 779-781, 788, 795-796, 817-818, 837, 872-874, 885, 894-896, 965, 1327, 1322, 1324, 1327-1335, 1371-1372, 1387, 1518-1527, 1626, 1704-1726; CP 223-226. Defendant was forty years old at the time and he knew both girls were fifteen. RP 670, 782, 1626. Defendant had both girls weigh and package his marijuana for sale as well as coordinate marijuana sales to other kids. RP 652-653, 658, 779, 872-873, 965. Each girl helped defendant deliver marijuana from his car to numerous locations throughout Pierce County. RP 650-651, 654, 658, 663, 719-722, 780-781. Defendant paid the girls money and marijuana for their participation. RP 722, 724, 785, 898-899. Defendant admitted to police that he met the victims through “some people he dealt with” and “rolled” with them in his vehicle. RP 1598-1599. The evidence of the victims’ involvement in defendant’s drug trafficking was uncontroverted. RP 1704-1726. Counts V and IV were clearly supported by the evidence.

b. The Evidence Proved Defendant Unlawfully
Delivered Marijuana to Two People Under
the Age of Eighteen.

To convicted defendant of the crime of Unlawful Delivery of a Controlled Substance to a Person Under the Age of Eighteen as charged in Court VII (as to H.T.) and Count VIII (as to V.N.) the jury had to find that each of the following elements was proved beyond a reasonable doubt:

- (1) That between the 1st day of March, 2008[,] and the 4th day of June, 2008[,] the defendant was at least 18 years of age;
- (2) That between 1st day of March, 2008[,] and the 4th day of June, 2008[,] the defendant delivered a controlled substance;
- (3) That the defendant knew that the substance delivered was a controlled substance, marijuana;
- (4) That the defendant knew the delivery was made to a person under eighteen years of age and at least three years defendant's junior; and
- (5) That this act occurred in the State of Washington.

CP 293 (Count VII, Instruction No. 21), 294 (Count VIII, Instruction No. 22); RCW 69.50.401(1)(2)(b); 69.50.406(2).

As discussed above, uncontroverted evidence showed defendant continuously supplied H.T. and V.N. with marijuana to smoke and sell in Pierce County, Washington. RP 547-548, 551-552, 632-635, 637-638, 643-648, 650-663, 720-723, 756, 767-770, 772-774, 779-781, 788, 795-796, 817-818, 837, 872-874, 885, 894-896, 965, 1327, 1322, 1324, 1327-1335, 1371-1372, 1387, 1518-1527, 1626, 1704-1726. The deliveries took place over the course of a several week relationship within the time period

alleged in the third amended information when defendant was forty years old and knew both girls were fifteen. *Id.*; CP 223-226, 293 (Count VII, Instruction No. 21), 294 (Count VIII, Instruction No. 22). The evidence of defendant's unlawful deliveries was corroborated by several witnesses. RP 547-548, 551-552, 1322-1369, 1370-1431, 1518-1527. Defendant admitted he met the victims through "some people he dealt with" and "rolled" with them in his vehicle. RP 1598-1599. Defendant's convictions for Counts VII and VIII are clearly supported by the record.

3. THE ABSENCE OF A **PETRICH** INSTRUCTION IS HARMLESS ERROR BECAUSE DEFENDANT'S CRIMINAL ACTS WERE COLLECTIVELY ESTABLISHED THROUGH UNCONTROVERTED EVIDENCE.

"In Washington, a defendant may be convicted only when a unanimous jury concludes that the criminal act charged in the information has been committed." *State v. Kitchen*, 110 Wn.2d 403, 409, 756 P.2d 105 (1998) (citation omitted). "When the prosecution presents evidence of several acts that could form the basis of one count charged, either the State must tell the jury which act to rely on in its deliberations or the court must instruct the jury to agree on a specific criminal act." *Id.* (citing *State v. Petrich*, 101 Wn.2d 566, 570, 572, 683 P.2d 173 (1984); *State v. Workman*, 66 Wash. 292, 294-205, 119 P. 751 (1911)).

“By requiring a unanimous verdict on one criminal act [appellant courts] protect a criminal defendant’s right to a unanimous verdict based on an act proved beyond a reasonable doubt.” *State v. Coleman*, 159 Wn.2d 509, 511-512, 150 P.3d 1126 (2007) (citing *State v. Camarillo*, 115 Wn.2d 60, 63-64, 794 P.2d 850 (1990)). “Where there is neither an election nor a unanimity instruction in a multiple acts case, omission of the unanimity instruction is presumed to result in prejudice ... because of the possibility that some jurors relied on one act or incident and some relied on another, resulting in a lack of unanimity on all of the elements necessary for a valid conviction. *Coleman*, 159 Wn.2d at 512 (citing *Kitchen*, 110 Wn.2d at 411-412).

A conviction in a multiple acts case containing a *Petrich* error may nonetheless be upheld if it is harmless beyond a reasonable doubt. *Bobenhouse*, 166 Wn.2d 881, 893-894, 214 P.3d 907 (2009); *Camarillo*, 115 Wn.2d 60, 63-64; *Kitchen*, 110 Wn.2d at 411-412. The constitutional harmless error rule “preserves an accused’s right to a fair trial without sacrificing judicial economy in the inevitable presence of immaterial error.” *Kitchen*, 110 Wn.2d at 409 (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 680-682, 106 S. Ct. 1431, 1436-1437, 89 L. Ed. 2d 674 (1986)). This test allows the presumption of prejudice to be overcome if the appellate court finds no rational juror could have a reasonable doubt as to any one of the incidents established by the evidence. *Id.* (citations omitted).

Failure to instruct on unanimity in a multiple acts case has been held harmless error when the totality of the evidence shows the jury would not have found one of the acts occurred if it did not believe each of the acts occurred. See *Bobenhouse*, 166 Wn.2d at 894; *Camarillo*, 115 Wn.2d at 70-71; *State v. Allen*, 57 Wn. App. 134, 138-139, 787 P.2d 566 (1990). Interdependent acceptance of each act is implied by uniform verdicts based on uncontroverted evidence of substantially similar incidents. See *Bobenhouse*, 166 Wn.2d at 894; *Camarillo*, 115 Wn.2d at 70; *Allen*, 57 Wn. App. at 139. This is due to the corresponding absence of evidence upon which the jury could rationally discriminate as to the respective occurrence among incidents supported by the evidence. See *Bobenhouse*, 166 Wn.2d at 895; *Camarillo*, 115 Wn.2d at 70; *Kitchen*, 110 Wn.2d at 414; *Allen*, 57 Wn. App. at 139.

At the same time appellant courts will not construe evidence supporting a defendant's theory of general denial as contravening the demonstrated existence of any particular incident in a multiple acts case. See *Camarillo*, 115 Wn.2d at 71; *Kitchen*, 110 Wn.2d at 414; *Allen*, 57 Wn. App. 139. This is because a general denial does not provide the jury with a rational basis to discriminate among demonstrated incidents; it presents an irreconcilable version of events. See *Camarillo*, 115 Wn.2d at 71; *Allen*, 57 Wn. App. 139. The verdict reflects the jury's decision about the respective credibility of the competing claims and a jury's resolution of a credibility issue is not subject to review. See *Camarillo*, 115 Wn.2d

at 71. Conviction attests to the jury's rejection of a defendant's general denial since the countervailing evidence must have engendered an abiding belief in the truth of the charge. CP 274 (Instruction No. 2); *see also State v. Swan*, 114 Wn.2d 613, 661-662, 790 P.2d 610 (1990) (the jury is presumed to follow the court's instructions).

The drug convictions at issue required the jury to unanimously agree defendant delivered marijuana to two minors, *i.e.*, H.T. and V.N., as well as involved them in a transaction to deliver marijuana. CP 286 (Instruction No. 14), 287 (Instruction No. 15), 292 (Instruction No. 20), 293 (Instruction No. 21), 294 (Instruction No. 22), 309-312. The State concedes it was error not to instruct the jury on unanimity because it

presented evidence of multiple acts which could have independently supported the charges, yet it did not specify which acts it was relying on.⁹ RP 650, 654, 659-662, 768, 772-774, 779-780, 837, 885, 894-895, 1333-1335; *see also Petrich*, 101 Wn.2d at 572. The instructional error was nonetheless harmless beyond a reasonable doubt.

⁹ At a hearing outside of the jury's presence the State argued the acts of delivering a controlled substance to a person under the age of eighteen and involving a minor in a drug transaction were part of a continuing course of conduct; the trial court agreed. RP 1734-1741. Controlled substance deliveries committed at different times are generally distinct offenses notwithstanding the fact that they were a part of an ongoing criminal enterprise. *See State v. Fiallo-Lopez*, 78 Wn. App. 717, 725-726, 889 P.2d 1294 (1995); *see also United States v. Maxey*, 989 F.2d 303, 306 (9th Cir. 1993) (rejecting the proposition multiple illicit drug sales committed in the course of an ongoing drug-trafficking business comprise a single criminal episode. To so hold would insulate the very career criminals delivery statutes are designed to reach—those continuously engaged in criminal conduct).

The same may not be true of certain conduct proscribed by RCW 69.50.4015 (involving a minor in a transaction to deliver a controlled substance). The statute does not denote the unit of prosecution. *Id.* The statute criminalizes several activities including an offender's formation of an agency agreement with a minor, wherein the minor is employed to sell a controlled substance on behalf of the offender so long as the agreement remains in place. *Id.* The "transaction" is not demarcated by a minor's completion of each delivery since conviction under RCW 69.50.4015 does not require proof the minor engaged in any affirmative act pursuant to the agreement. *Flores*, 164 Wn.2d at 12, *Hollis*, 93 Wn. App. at 812. Deliveries completed by the minor according to the original agreement would then amount to evidence of the agreement (or transaction to deliver) instead of discrete violations of the RCW 69.50.4015. *See generally, Flores*, 164 Wn.2d at 12, *Hollis*, 93 Wn. App. at 812; *see also Hewson Construction, Inc., v. Reintree Corp.*, 101 Wn.2d 819, 823, 685 P.2d 1062 (1984) ("An agency relationship may exist, either expressly or by implication, when one party acts at the instance of and, in some material degree, under the direction and control of another.") (citations omitted).

Multiple count convictions for violations of RCW 69.50.4015—when the underlying facts prove a single overarching agreement—might require some evidence of separate agreements or an agreement renewed after an intervening interruption. *See generally State v. Adel*, 136 Wn.2d 629, 965 P.2d 1072 (1998) (interpreting RCW 69.50.401(e) as creating one unit of unlawful possession of a controlled substance).

The State nonetheless concedes multiple violations of RCW 69.50.4015 occurred in the case at bar because the evidence shows defendant repeatedly solicited the victims agreement to participate in his marijuana deliveries instead of merely supervising their independent marijuana sales on his behalf pursuant to a single agreement.

The jury was properly instructed on the elements of each offense. CP 286 (Instruction No.14), 287 (Instruction No. 15), 292 (Instruction No. 20), 293 (Instruction No. 21), 294 (Instruction No. 22). The jury was also accurately instructed on the State's burden of proof, the presumption of innocence, and that a separate crime requiring the jury's independent determination was charged in each count. CP 274 (Instruction No. 2), 277 (Instruction No. 5).

Uncontroverted evidence established defendant employed two fifteen year girls to assist in an illicit marijuana enterprise. RP 547-548, 551-552, 632-635, 637-638, 643-648, 650-663, 720-723, 756, 767-770, 772-774, 779-781, 788, 795-796, 817-818, 837, 872-874, 885, 894-896, 965, 1327, 1322, 1324, 1327-1335, 1371-1372, 1387, 1518-1527, 1626, 1704-1726. On nearly a daily basis—over the course of several weeks—defendant gave H.T. and V.N. marijuana to smoke and prepare for sale. *Id.* The victims' uncontroverted testimony was corroborated by several witnesses. RP 547-548, 551-552, 1327, 1322, 1324, 1327-1335, 1371-1372, 1387, 1518-1527. The quantum of evidence offered in support of each criminal act only varied in so much as the victims were able to provide representative examples of how defendant conducted his marijuana business. RP 547-548, 551-552, 632-635, 637-638, 643-648, 650-663, 720-723, 756, 767-770, 772-774, 779-781, 788, 795-796, 817-818, 837, 872-874, 885, 894-896, 965, 1327, 1322, 1324, 1327-1335, 1371-1372, 1387, 1518-1527, 1626, 1704-1726. The uniformity of the

evidence makes it unreasonable to conclude the jury would have believed one of the demonstrated criminal acts occurred if it did not believe that they all occurred.

Defendant's case is plainly analogous to *Camarillo*, *Bobenhouse*, and *Allen*. *Infra*. Each case presents a pattern of substantially similar criminal acts that occurred during a comparable timeframe. *Bobenhouse*, 166 Wn.2d at 895; *Camarillo*, 115 Wn.2d at 70; *Kitchen*, 110 Wn.2d at 414; *Allen*, 57 Wn. App. at 139; CP 223-226. The frequency of the similar criminal acts in *Allen*¹⁰ were described as occurring "almost every day" over a period of several months as they were in defendant's case; in *Bobenhouse*¹¹ the similar criminal acts were more generally described as occurring "regularly" over the course of several years. *See also Kitchen*, 110 Wn.2d 408.

Defendant is also like the perpetrator in *Bobenhouse*¹² in that his counsel advanced an unsubstantiated defense of general denial that did not challenge the occurrence of any particular act that could have supported the charges. RP 1840-1872. Counsel conceded the victims were selling marijuana. RP 1855, 1870. Counsel also conceded that someone was selling marijuana to them, but argued "there [wa]s no credible evidence that it was [defendant]." RP 1857, 1869. Counsel argued the victims set

¹⁰ 57 Wn. App. at 135-136.

¹¹ 166 Wn.2d at 885-886.

¹² 166 Wn.2d at 887.

defendant up as a “Patsy” by falsely accusing him of directing their illicit marijuana business in order to insulate themselves from criminal liability. RP 1871. Counsel invited the jury to categorically reject the evidence of defendant’s culpability in the controlled substance offenses; she never attempted to isolate any particular delivery as being less likely to have occurred. RP 1855-1857, 1869-1871. On appeal, defendant similarly concedes that “it was impossible for the jury to distinguish among the alleged acts....” App. Br. at 1.

The facts of defendant’s case present an even stronger case for harmless error than those presented in *Allen* and *Camarillo*. *Infra*. The perpetrators in those cases testified in support of their general denial. *Camarillo*, 115 Wn.2d at 68-69; *Allen*, 57 Wn. App. at 139. Defendant did not. RP 1704-1726. The record is consequently devoid of direct evidence disputing the existence of any criminal act described by the victims. RP 1704-1726.¹³

At the same time defendant’s case is markedly distinguishable from multiple acts cases in which the evidence did not support a finding of harmless error. In *Petrich*, the jury’s unanimous belief in the occurrence

¹³ Defendant’s residence manager testified she was not aware of defendant bringing anyone into the building after hours, but that fact did not make the occurrence of any of the conceded marijuana deliveries outside the apartment facility less likely. *See Camarillo*, 115 Wn.2d at 66, 69-71 (testimony that defendant was never seen alone with the victim from a woman who lived with defendant during the relevant period did not controvert the victim’s claim he was molested in defendant’s house).

of each criminal act was called into question by the victim's expressed uncertainty about the type of sexual contact that occurred during each instance of abuse. 101 Wn.2d 566. Petrich was charged with indecent liberties and second degree statutory rape which criminalize different types of sexual conduct.¹⁴ Under those facts the Supreme Court could not conclude the jurors the verdicts reflected unanimous agreement on each incident that potentially supported the convictions. 101 Wn.2d 566; *see also State v. Holland*, 77 Wn. App. 420, 424-425, 891 P.2d 49 (1995) (acquittal on one of three counts of first degree rape made it impossible to know whether the jury was unanimous as to the remaining two); *Coleman*, 153 Wn.2d at 514 (the occurrence of one of the multiple acts called into question by contravening evidence and victim inconsistency); *Kitchen*, 110 Wn.2d 406-408 (conflicting evidence as to each of the several acts for which evidence was presented); *State v. Hanson*, 59 Wn. App. 651, 800 P.2d 1124 (1990) (defendant's participation not clearly shown in each of the alleged incidents).

The record in defendant's case is not similarly afflicted with discrepant proof of the nature or existence of any particular act that could

¹⁴ RCW 9A.44.100; 9.79.210, Recodified as 9A.44.080 pursuant to 1979 ex.s. c 244 § 8.

have independently supported his convictions.¹⁵ RP 547-548, 551-552, 632-635, 637-638, 643-648, 650-663, 720-723, 756, 767-770, 772-774, 779-781, 788, 795-796, 817-818, 837, 872-874, 885, 894-896, 965, 1327, 1322, 1324, 1327-1335, 1371-1372, 1387, 1518-1527. The evidence pertaining to each of the substantially similar acts of physically involving two minors in illicit marijuana trafficking was uncontroverted and their occurrence—aside from defendant’s involvement—was generally conceded by the defense. RP 1869-1871.¹⁶ The record is consequently devoid of any reason for the jury to question the existence of any particular act, so there was no rational basis for the jurors to have maintained discrepant beliefs about each act’s respective occurrence when reaching their uniform verdicts. Defendant concedes as much on appeal. App.Br. at 1.

¹⁵ The jury was presented with a series of substantially similar marijuana deliveries that shared the common objective of furthering defendant’s marijuana enterprise while making the victims more susceptible to his sexual advances. *Id.* There was evidence that at least one of the victims at bar denied having any involvement in defendant’s marijuana business when she was initially questioned by law enforcement. RP 712-713.¹⁵ Evidence a victim categorically denied the occurrence of all wrongdoing on the part of a defendant before inculcating a defendant in multiple criminal acts at trial may call the entirety of the victim’s testimony into question. Its material effect is nonetheless substantively indistinguishable from the general denials addressed in *Camarillo*, (115 Wn.2d at 70, *Bobenhouse*, 166 Wn.2d at 887, and *Allen*, 57 Wn. App. at 139, because it does not provide a rational basis to discriminate among incidents. The jury was still left with the ultimate decision of having to decide between two versions of events. In the instant case H.T.’s out-of-court dishonesty may have given the jury cause to disbelieve her testimony, yet her categorical denial did not provide the jury a reason believe some marijuana deliveries occurred while maintaining doubt as to others.

¹⁶ This fact does not result a double jeopardy problem as the victim of the delivery counts was the public while victims of the involving a minor in a drug transaction offenses were the minors and actual delivery is not a necessary condition of this offense. *See Flores*, 164 Wn.2d at 12; *Holls*, 93 Wn. App. at 812-814.

The jury decided the uncontroverted evidence of defendant's role in the victims' marijuana dealings was sufficient to overcome any doubt attending his general denial of involvement. The verdicts that followed prove the jury concluded the victims were telling the truth about defendant's drug crimes while the uniformity of those verdicts expressed the jury's interdependent belief in truth of each incident. The instructional error was consequently harmless beyond a reasonable doubt. Defendant's convictions should be affirmed.

4. THE SEXUAL MOTIVATION SENTENCE
ENHANCEMENTS WERE SUPPORTED BY
SUFFICIENT EVIDENCE THAT DEFENDANT'S
MARIJUANA DELIVERIES WERE PARTIALLY
AIMED AT DRAWING HIS VICTIMS INTO A
SEXUAL RELATIONSHIP.

A jury's special verdict findings are reviewed under the sufficiency of the evidence standard. *See State v. Chanthabouly*, 164 Wn. App. 104, 142, 262 P.3d 144 (2011) (citing *State v. Stubbs*, 170 Wn.2d 117, 123, 240 P.3d 143 (2010); RCW 9.94.585(4)). The evidence is therefore considered in the light most favorable to the State to determine whether any rational trier of fact could have found the presence of the sentence-enhancing fact beyond a reasonable doubt. *See Chanthabouly*, 164 Wn. App. at 143 (citing *State v. Yates*, 161 Wn.2d 714, 752, 168 P.3d 359 (2007)).

A sentencing court may impose an exceptional sentence when an offense is committed with “sexual motivation.” RCW 9.94A.533(8)(a). “Sexual motivation” means that “one of the purposes for which the defendant committed the [underlying] crime was for the purpose of his or her sexual gratification.” RCW 9.94A.030(47).¹⁷ The evidence does not need to show that sexual gratification was a defendant’s sole motivation¹⁸ for committing the crime. *See generally State v. Haq*, ___ Wn. App. ___, 268 P.3d 997, No. 64839-0-I (2012); *State v. Read*, 163 Wn. App. 853, 868 P.3d 207 (2011). It is sufficient that a defendant was “motivated in part” by the pursuit of sexual gratification. *See generally Haq*, 268 P.3d at 1027.

Although a defendant’s motivations for committing an offense may be multifarious there must be evidence of an identifiable sexual motivation underlying the offense. *See State v. Halstien*, 122 Wn. 2d 109, 857 P.2d 270 (1990). Evidence of sexual motivation is not limited to criminal sexual contact. *See Halstien*, 122 Wn. 2d at 121, 124. Reading a requirement of sexual contact into the sexual motivation enhancement

¹⁷ “Gratification” is not defined in RCW 9.94A.030. “Where a term used in a statute is not defined therein, [appellate courts] may rely on the ordinary meaning of the term.” *Hollis*, 93 Wn. App. at 811 (*citing State v. Edwards*, 84 Wn. App. 5, 10, 924 P.2d 397 (1996), *review denied*, 131 Wn.2d 1016, 936 P.2d 416 (1997); *see also Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). “gratification” is “the state of being gratified” to “gratify” is to “give or be a source of pleasure” Webster’s Third New International Dictionary 991-992 (2002).
¹⁸ “Motive” is an “inducement which tempts a mind to commit a crime.” *State v. Yarbrough*, 151 Wn. App. 66, 84, 210 P.3d 1029 (2009) (*citing State v. Boot*, 89 Wn. App. 780, 789, 950 P.2d 964, *review denied*, 135 Wn.2d 1015, 960 P.2d 939 (1998)).

would undermine the purpose of the statute, which was enacted to fill a perceived gap in the criminal code not covered by existing sex offense crimes and to mandate treatment for such offenders in an effort to prevent them from later committing more serious sex offenses. *Id.* The overarching policy is to protect the public from offenders who are making a connection between criminal acts and sexual objectives. *Id.*

Defendant's jury was presented evidence defendant used his marijuana deliveries to manipulate two fifteen year old girls into performing sexual acts for him. The evidence supports an inference defendant singled the victims out for sexual gratification—rather than merely to advance his pecuniary interest in juvenile drug runners with contacts at the local high schools—because they were the only females employed to sell his marijuana. RP 719-720, 779. Defendant respectively referred to his victims as “mama” and “little mama,” and had them refer to him as “Papa;” the other kids that dealt with defendant variously referred to him by the aliases “House” and “Weed Man.” RP 636-637, 665, 733, 761, 837, 1328. Defendant conditioned the victims' participation in his marijuana business on the performance of sexualized-loyalty tests. RP 663-690, 789-833, 1083-1084, 1137, 1583. Defendant exploited the victims' low self esteem by encouraging their belief that selling marijuana for him would improve their social standing among their peers. RP 663-665, 750, 776-788, 801. The sexual interactions generally commenced, or were otherwise closely associated, with defendant's delivery of marijuana

to the victims. RP 670-678, 683-685-690, 801, 806, 820, 1083-1084, 1137. Defendant withheld marijuana whenever the victims upset him. RP 799-801. Defendant bragged about his sexual intercourse with the victims to another adolescent receiving a marijuana “allowance” from him. RP 1373, 1387, 1383.

There was no evidence defendant employed similar tactics with the males that sold marijuana on his behalf. RP 1-1726. Defendant eventually manifested a demeanor that could have been reasonably interpreted as shame when police questioned him about the victims. RP 1598-1601. A rational jury could conclude defendant’s marijuana deliveries to the victims were at least partially motivated by his prurient interest in them.

Defendant claims the jury’s decision to acquit him of the allegations of third degree rape of a child demonstrates there was insufficient evidence of his sexual motivation, describing the result as instance of inconsistent verdicts. App.Br. at 20. The verdicts were not inconsistent. Defendant’s argument seemingly dismisses the fact that a finding of “sexual motivation” does not require proof of sexual intercourse. *Halstien*, 122 Wn. 2d at 121, 124; RCW 9.94A.030(47); RCW 9A.44.010(1), .079. The jury could have consistently believed that defendant’s marijuana deliveries were partially intended to render the victims more receptive to his illegal-sexual advances while simultaneously believing that the evidence failed to establish—beyond a reasonable

doubt—that sexual intercourse with them occurred. *See also State v. Goins*, 151 Wn.2d 728, 733-734, 736-738, 92 P.3d 181 (2004) (Juries return seemingly inconsistent verdicts for various reasons, including compromise and lenity. So long as a jury’s verdicts are supported by sufficient evidence, appellate courts will not reverse a guilty verdict simply because it was inconsistent with an acquittal on another count). The special verdicts should be affirmed because they are supported by the record.

5. DEFENDANT’S CLAIM OF A *BASHAW* ERROR SHOULD BE REJECTED BECAUSE IT WAS NOT PRESERVED FOR REVIEW AND IS NOT SUPPORTED BY THE RECORD.

In *State v. Bashaw*, the Supreme Court reaffirmed that jury unanimity is required to find the presence of a penalty-enhancing fact but is not required to find its absence. *State v. Bashaw* 169 Wn.2d 133, 146-147, 234 P.3d 195 (2010) (citing *State v. Goldberg*, 149 Wn.2d 888, 893, 72 P.3d 1083 (2003)). *Bashaw* justified this rule as a means of advancing several policy objectives such as judicial economy. 169 Wn.2d at 146 n. 7 (“This rule is not compelled by constitutional protections against double jeopardy ... but rather by the common law precedent of this court, as articulated in *Goldberg*.”).

a. Defendant Waived His Ability to Raise a **Bashaw** Claim when He Failed to Object to the Special Verdict Instruction Below.

“Before instructing the jury, the court ... shall ... afford ... each counsel an opportunity ... to object to the giving of any instruction....” CrR 6.15(c). Thereafter, “[a]n objection to a jury instruction cannot be raised ... on appeal unless the instructional error is of constitutional magnitude.” *State v. Dent*, 123 Wn.2d 467, 477, 869 P.2d 392 (1994) (citing *State v. Fowler*, 114 Wn.2d 59, 69, 785 P.2d 808 (1990)). If the instructional error is not of a constitutional magnitude, then “whether the instruction was rightfully or wrongfully given, it [i]s binding and conclusive upon the jury, and constitutes ... the law of the case.” *State v. Hickman*, 135 Wn.2d 97, 102 n. 2, 954 P.2d 900 (1998) (quoting *Pepper v. City Park Transit Co.*, 15 Wash. 176, 180, 45 P. 743 (1896)); see also RAP 2.5(a); *State v. Hames*, 74 Wn.2d 721, 725, 446 P.2d 344 (1968). “[T]he law of the case doctrine benefits the system by encouraging trial counsel to review all jury instructions to ensure their propriety before the instructions are given to the jury.” *Hickman*, 135 Wn.2d at 105.

Defendant filed proposed jury instructions at trial that included two special verdict forms pertaining to the sexual motivation enhancements. CP 227-258. Defendant did not propose an instruction directing special verdict deliberations or object to the special verdict instruction issued by

the trial court. RP 1784-1785, 1803-1811; CP 227-258, CP 304 (Instruction No. 31). Defendant did file a motion to vacate the special verdicts at sentencing, claiming a *Bashaw* error he did not raise before the jury was instructed. CP459-466.

Defendant maintains he received a *Bashaw* instruction that resulted in manifest constitutional error. App.Br.¹⁹ at 23-24. *Bashaw* instructions are not manifest constitutional error because the constitution does not require nonunanimous acquittal to dispose of penalty-enhancing factors. See *Bashaw*, 169 Wn.2d at 145-148. This Court has recently held that *Bashaw* instructions are not constitutional error. See *State v. Berlin*, ___ Wn. App. ___, ___ P.3d ___, No. 41307-8-II (2012) (Published in Part); *State v. Grimes*, 165 Wn. App. 172, 175, 267 P.3d 454 (2011); see also *State v. Morgan*, 163 Wn. App. 341, 352-353, 261 P.3d 167(2011), petition for rev. filed, No. 86555-8 (Wash. Oct. 3, 2011); *State v. Nunez*, 160 Wn. App. 150, 158-165, 248 P.3d 103, review granted, 172 Wn.2d 1004 (2011); but see *State v. Ryan*, 160 Wn. App. 944, 948-949, 252 P.3d

¹⁹ Appellant's Brief ("App.Br.").

895, review granted, 172 Wn.2d 1004 (2011).²⁰ Defendant's is procedurally barred from raising this claim for the first time on appeal.

²⁰ This Court has determined that it is prudent to conduct a complete analysis of *Bashaw* claims even when it determines they have been waived; this is due to the uncertainty attending their constitutional nature given the Supreme Court's acceptance of review in *Ryan* and *Nunez*. See *Berlin*, __ Wn. App. __, __ P.3d __, No. 41307-8-II (2012) (Published in Part).

Assuming the Supreme Court holds *Bashaw* errors are based on constitutional protections, in defendant's case the error would not be "manifest." For an error to be "manifest," the defendant must show that it had practical and identifiable consequences at trial. *State v. Gordon*, 172 Wn.2d 671, 676, 260 P.3d 884 (2011). To ascertain whether the trial court could have corrected the error given its knowledge at the time, the appellate court must place itself in the trial court's shoes when determining if the alleged error had practical and identifiable consequences. *State v. O'Hara*, 167 Wn.2d 91, 100, 217, P.3d 756 (2009).

In *Grimes*, this Court held that the instructional error could not have had a practical and identifiable consequence at trial because: (1) "unlike *Bashaw*" *Grimes* did not cast doubt on the existence of the evidence supporting the imposition of the sentence enhancement on the record at trial, (2) "unlike ... *Goldberg*, the record did not show that the jury disagreed about whether the sentence enhancement was proven beyond a reasonable doubt," and (3) "Grime's jury was not instructed to deliberate after first returning a verdict that was not unanimous on the sentence enhancement." 165 Wn. App. at 189-190 (internal alterations omitted).

Each of those conditions is also true of defendant's case as he did not present evidence that negated his motivations for hiring the victims to sell marijuana with him and the jury's deliberations were not accompanied with the irregularities identified in *Grimes*. RP 636, 645, 663-665, 670-678, 683-685-690, 719-720, 761-762, 776, 779, 788, 789 790-791, 808-828, 833, 837, 1083-1084, 1137, 1328, 1330, 1704-1726, 1886-1895; CP 313-314.

The error would otherwise be harmless beyond a reasonable doubt because uncontroverted testimony gave rise to a reasonable inference that defendant was motivated to employ the victims at least in part to facilitate a sexual relationship with them. *Id.* The persuasiveness of that evidence required the jury's unreviewable determination of the victims' credibility. See *Camarillo*, 115 Wn.2d at 71. Conversely, the jury in *Bashaw* heard no properly admitted direct evidence establishing the sentencing enhancement. 169 Wn.2d at 138, 143; see also *Grimes*, 165 Wn. App. at 191; *Berlin*, __ Wn. App. __, __ P.3d __, No. 41307-8-II (2012) (Published in Part) (This Court does not "divorce the focus on a 'flawed deliberative process' in its analysis of these instructional errors from the context of the entire record, including the State's evidence.").

- b. ***Bashaw* is Immaterial to Defendant's Case because His Jury was not Given a *Bashaw* Instruction .**

Bashaw identified the following instructional language as error:

“Since this is a criminal case, all twelve of you must agree on the answer to the special verdict.”

169 Wn.2d at 139. Whereas defendant's special verdict instruction stated in relevant part that:

“In order to answer the special verdict forms ‘yes,’ you must unanimously be satisfied beyond a reasonable doubt that “yes” is the correct answer. If you have a reasonable doubt as to the question, you must answer ‘no.’”

CP 304 (Instruction No. 31).

Defendant's instruction did not contain the unanimity language identified as error in ***Bashaw***. The language used in defendant's instruction was upheld as proper in ***Goldberg***, 149 Wn.2d 893-984 and ***State v. Coleman***, 152 Wn. App. 552, 564-565, 216 P.3d 479 (2009). ***Bashaw*** is therefore immaterial to defendant's case.


D. CONCLUSION.

Defendant's controlled substance convictions and sexual motivation enhancements were established through uncontroverted evidence that rendered the trial court's instructional error harmless beyond

a reasonable doubt. Defendant's convictions and sentence should be affirmed.

DATED: APRIL 19, 2012

MARK LINDQUIST
Pierce County
Prosecuting Attorney


JASON RUYF
Deputy Prosecuting Attorney
WSB # 38725

Certificate of Service:

The undersigned certifies that on this day she delivered by email or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

Date _____ Signature _____

APPENDIX “G”

Transcript

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF PIERCE ^{FILED}
IN COUNTY CLERK'S OFFICE

3 DEPARTMENT 19

A.M. JUN 24 2011 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STACH, County Clerk
BY W DEPUTY

4
5 STATE OF WASHINGTON,)

6 Plaintiff,)

) No. 08-1-02916-8

7 vs.)

) COA No.

) 41916-5-II

8 JEFFREY RANDALL,)

9 Defendant.)

10
11
12 VERBATIM TRANSCRIPT OF PROCEEDINGS

13
14 August 24, 2010

15 Pierce County Courthouse

16 Tacoma, Washington

17 before the

18 HONORABLE LINDA CJ LEE

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COURT DEPUTIES
PENDING
11 JUL -6 AM 9:54
STATE OF WASHINGTON
BY W DEPUTY

19 REPORTED BY: KELLIE A. SMITH, CCR, RPR

21 For the State:

RAYMOND ODELL

HEATHER DEMAINE

Deputy Prosecuting Attorneys

23 For the Defendant:

JANE PIERSON

Attorney at Law

25
ORIGINAL

1 MS. PIERSON: Well, the State's still opposing
2 my reinterviewing the alleged victim. They've been
3 deposed. That's enough. The State still hasn't
4 responded to the other motions I filed. The State is
5 correct that they didn't get this until 12:55. That's
6 when I pressed print and made copies and immediately
7 sent them an e-mail. That's as fast as I could get them
8 finished. I had to cover for some other lawyers that
9 didn't show up in court today. So I do apologize for
10 that. Maybe the Court would like to inquire of the
11 State of their continuing representation that I
12 shouldn't be allowed to interview the potential
13 witnesses, especially the victims. They've been very
14 adamant about that throughout.

15 THE COURT: When was the deposition taken?

16 MS. DEMAINE: Prior to my coming into the
17 case. My understanding the depositions occurred in
18 February, and there's a transcript.

19 MS. PIERSON: No. It would have been while
20 Karen Campbell, here, with the conflict office. So I'm
21 going to guess probably November, December of 2009.

22 MS. DEMAINE: Your Honor, these alleged
23 victims, they're minors, and it was my understanding --
24 Mr. Peters did the interviews -- they were very lengthy.
25 He's assured me Ms. Campbell covered ample areas. And

1 so the State's obligation is to make the witnesses
2 available for a defense interview. We did that. And
3 the defendant has gone through several attorneys, one of
4 which -- two of which were conflicted out, but the
5 victim shouldn't have to pay the price for the
6 occurrences that led to multiple defense attorneys
7 taking over the case. We are adamant, Ms. Campbell,
8 she's a very, very capable attorney, as everyone in this
9 courtroom knows. She covered and went through what
10 needed to be touched upon. And you have those
11 transcripts, don't you?

12 MS. PIERSON: I do, and I'm assuming the State
13 has copies.

14 MR. ODELL: We didn't pay for copies. We took
15 our --

16 MS. PIERSON: Oh, that's right. Court
17 reporters, you have to pay for a copy to get one.

18 THE COURT: How many interviews are we talking
19 about?

20 MS. DEMAINE: Multiple witnesses. I don't
21 know -- I don't know who's been difficult in contacting.
22 Several are law enforcement. I don't think there's any
23 problem interviewing them.

24 MS. PIERSON: The critical persons that I want
25 to interview, now I know I need to interview SS, and why

1 THE COURT: Fall of 2009. I'm going to deny
2 the request for reinterview of the victims at this
3 point. I haven't heard a good cause for that. And as
4 the frustration goes with -- it's two sides of the coin
5 on that frustration. New attorneys. And I can
6 appreciate that. Good attorneys really want to get a
7 handle like and get what their perspective is on an
8 interview, and when they get handed something someone
9 else did, although it's very good, they feel there's
10 something more I can get out of this person. And I can
11 appreciate that feeling, but there was already a
12 deposition of the victims and I'm going to let that
13 stand.

14 MS. PIERSON: And you know, I don't want to
15 tell them what questions I want to ask either. I want
16 to ask -- get my own answers. So with the Court's
17 decision, I guess we'll have to save that for the stand.

18 MR. ODELL: Your Honor, while you were making
19 your ruling, my victim's advocate, Ms. Trina Hall,
20 present in the courtroom, alerted me that the phone
21 number -- and the only phone number we have for
22 Victoria, one of the victims, is disconnected. We did
23 talk to SS, who said she can get in touch with her, so
24 we will definitely make contact with SS today once we
25 leave here and urge her to have Victoria call us and try

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

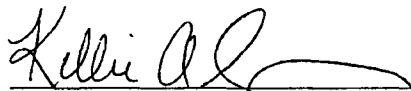
I, Kellie A. Smith, Notary Public, in and for the State of Washington, County of Pierce, residing at Puyallup, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings was reported by me and reduced to typewriting by computer-aided transcription;

That said transcript is a full, true, and correct transcript of the proceedings heard before Judge Linda CJ Lee on the 24th and 27th days of August, 2010, at the Pierce County Courthouse, Tacoma, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND AND OFFICIAL SEAL THIS 24th day of June, 2011.



Notary Public, in and for
the State of Washington,
residing at Puyallup.

APPENDIX “H”

Transcript

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
DEPARTMENT 15

STATE OF WASHINGTON,)	
)	
Plaintiff,)	COA # 41916-5-II
)	
vs.)	No. 08-1-02916-8
)	
JEFFREY L. RANDALL,)	
)	
Defendant.)	
)	

VERBATIM REPORT OF PROCEEDINGS

November 16, 2009
Pierce County Courthouse
Tacoma, Washington
before the
HONORABLE THOMAS J. FELNAGLE

A P P E A R A N C E S

For the Plaintiff:

MR. RAYMOND M. ODELL

Deputy Prosecuting Attorney

For the Defendant:

MS. KAREN L. CAMPBELL

Attorney at Law

1 NOVEMBER 16, 2009

2 AFTERNOON SESSION

3 * * * * *

4 MR. ODELL: Good afternoon, Your Honor.

5 Raymond Odell on behalf of the State. This is State of
6 Washington versus Jeffrey Randall; Cause Number
7 08-1-02916-8. Mr. Randall is in custody, represented by
8 Karen Campbell. This comes on before the Court for a
9 motion to compel discovery by Ms. Campbell.

10 MS. CAMPBELL: Thank you. Good afternoon,
11 Your Honor. Karen Campbell here on behalf of Mr. Randall,
12 present in custody.

13 This matter comes on for a defense motion to
14 compel records. This motion was filed in the Clerk's
15 Office on October 30th, 2009. I believe I gave the Court
16 a bench copy. I have an affidavit in support of this
17 motion. This motion is basically compelling production of
18 counseling records for in-camera review.

19 I did give notice to Comprehensive Mental
20 Health, who has the records. I first sent notice to Mary
21 Bridge Child Abuse Intervention Center, but they called
22 and said they didn't have the records and that
23 Comprehensive Mental Health is the agency that provided
24 the counselor to the alleged victim in this matter. And
25 they gave me the name of Dr. Mike Laederich, director of

1 Child and Family Services at Comprehensive Mental Health.
2 I sent him a copy of the pleadings. I also sent him a
3 letter -- the letter is dated November 9th -- indicating
4 this motion was set for today, and I cc'd Phoebe Mulligan,
5 who was the alleged victim's counselor.

6 So, all I am asking the Court to do is review
7 the motion and pleadings and grant the relief that I
8 requested. I will -- for purposes of argument, I will
9 rest on the pleadings in the affidavit.

10 THE COURT: Mr. Odell.

11 MR. ODELL: Thank you, Your Honor. Just a
12 quick response. I would ask the Court to not sign any
13 order compelling production of these documents.

14 Counsel does outline the requirements under
15 RCW 70.125.065, which in certain circumstances does allow
16 production of these records, but in Section Number (2),
17 the written motion must be accompanied by an affidavit or
18 affidavits setting forth specifically the reasons why the
19 defendant is requesting these records.

20 They simply -- defense simply points out that
21 the victims in this case discussed the incidents with Safe
22 and Sound, and they also discussed things that occurred at
23 school and issues involving her parents. These aren't
24 things that are relevant.

25 She lists Number 21 in her affidavit as

1 requesting these records for the purposes of possible
2 impeachment. Possible impeachment isn't enough. I mean,
3 she needs to specifically lay out the reasons why, and she
4 cites a case in here, State v. Kalakosky, in which,
5 similarly, the party seeking the records simply put that
6 the police reports indicate the victim spoke to rape
7 crisis workers shortly after the rape, and the Court found
8 that that doesn't justify compelling production of those
9 documents.

10 I ask the Court, at this point, absent any
11 real compelling reasons to show these -- or any relevance
12 to these documents, to deny it, to deny the motion, not
13 order production of those documents. Thank you.

14 THE COURT: Does a request for an in-camera
15 review lessen the State's concern to any degree?

16 MR. ODELL: It absolutely does. I think --
17 you know, I think the short answer is yes. I think the
18 Court could look at it and say this is relevant, this
19 absolutely is not relevant and you are on a fishing
20 expedition, and I would certainly trust the decision of
21 the Court. However, I think the Court would be wasting
22 its time, but, yes, Your Honor, it does lessen our
23 concern.

24 THE COURT: Ms. Campbell.

25 MS. CAMPBELL: Your Honor, I would agree to

1 in-camera review.

2 THE COURT: I think a person seeking records
3 like this is caught in a dilemma, because, on the one
4 hand, they don't know what's in there or they wouldn't be
5 asking, so they can't be too specific.

6 On the other hand, if they are so general that
7 it becomes a fishing expedition, that is not going to get
8 them anywhere either, so I think the in-between mechanism
9 of having the Court look at the documents when there's
10 this quantum of showing is probably the best way to go.

11 Do we have any idea how voluminous these
12 records are?

13 MS. CAMPBELL: No, we don't. Somebody is
14 going to have to produce them, and I don't want to hazard
15 a guess, but I'm wondering if Comprehensive has attorneys
16 or -- I mean, I sent it to this individual, but I'm
17 wondering if he really knows what to do with it. I can
18 send him a copy of the Court's order and direct him to
19 provide a file to the Court, this Dr., I believe it's,
20 Laederich, who I wrote a letter to. We can proceed that
21 way, or the State could. I'd be happy to, however.

22 THE COURT: I don't know. Directing him to
23 bring it to the Court is probably more cumbersome for them
24 than dealing with one of the two of you, but I don't know
25 if it's fair to put it on the State to do the legwork for

1 this, and I don't know whether or not they would provide
2 it to you given that there's supposed to be an in-camera
3 review first. That's a little uncomfortable for them.

4 MS. CAMPBELL: Probably a little uncomfortable
5 for me, too. I don't want to be in possession of
6 something that, technically, by law, I shouldn't be in
7 possession of.

8 THE COURT: Mr. Odell, any thoughts?

9 MR. ODELL: No, Your Honor, other than I will
10 assist Ms. Campbell with any attempt she makes to get
11 them. If she can draft an order capturing the spirit of
12 the Court's decision today, saying, in fact, they should
13 turn them over, all I can do is maybe get together with
14 her on a conference call.

15 THE COURT: Maybe something of that sort is
16 how it would most easily be handled, and then maybe they
17 could drop them at your office, Mr. Odell.

18 MR. ODELL: That is fine.

19 THE COURT: That would be better than coming
20 in the middle of a court session.

21 MS. CAMPBELL: Or maybe drop them at Court
22 Administration.

23 THE COURT: That's a possibility.

24 MS. CAMPBELL: I could just give them a number
25 and direct them to come in to Administration.

1 THE COURT: Why don't we draft the order
2 directing them to provide it to the Court and then ask
3 them to give one or both of you a call, and then you can
4 arrange for them to drop it off at Administration, explain
5 to them how to do that, and if you alert Sara to that,
6 somebody will be expecting it.

7 MS. CAMPBELL: If I could get a blank order, I
8 will draft that up.

9 MR. ODELL: Thank you, Your Honor.

10 THE COURT: All right.

11 MS. CAMPBELL: Thank you.

12 (Proceedings concluded.)
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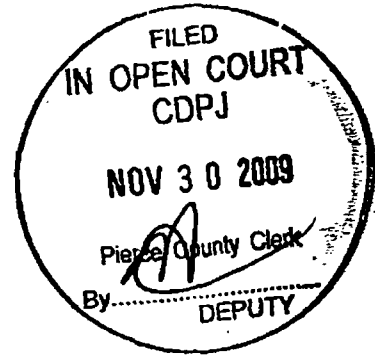
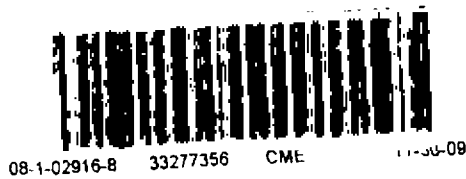
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APPENDIX “I”

Clerk’s Minute Entry



IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 08-1-02916-8

MEMORANDUM OF JOURNAL ENTRY

vs.

Page 1 of 2

RANDALL, JEFFREY LAMONT

Judge: CRIMINAL DIVISION- PRESIDING JUDGE

Court Reporter: SHERI SCHELBERT

Judicial Assistant/Clerk: Sara Fleck

RAYMOND M ODELL

Prosecutor

KAREN L. CAMPBELL

Defense Attorney

Proceeding Set: MOTION-WITHDRAWAL/SUBSTITUTION

Proceeding Date: 11/30/09 8:30

Proceeding Outcome:

Resolution:

Clerk's Code:

Proceeding Outcome code:

Resolution Outcome code:

Amended Resolution code:

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 08-1-02916-8

**MEMORANDUM OF
JOURNAL ENTRY**

vs.

Page: 2 of 2

RANDALL, JEFFREY LAMONT

Judge:

CRIMINAL DIVISION- PRESIDING JUDGE

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: Sara Fleck

Court Reporter: SHERI SCHELBERT

Start Date/Time: 11/30/09 10:03 AM

November 30, 2009 10:03 AM DPA Raymond O'Dell present on behalf of the State. Defendant present I/C with attorney Karen Campbell. This matter comes before the Court for the Court's ruling on In-Camera Review.

10:05 AM The Court rules that all "tabbed" documents are to be provided to counsel. The "non-tabbed" documents are ordered to be filed and sealed. No objection by attorneys or members of the gallery to seal "non-tabbed" documents.

This matter is adjourned.

End Date/Time: 11/30/09 10:08 AM

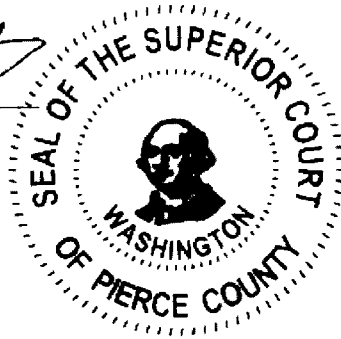
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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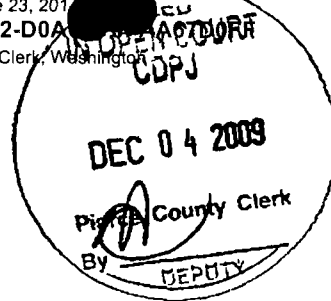


08-1-02916-8 33337404 ORSD 12-09-09

Case Number: 08-1-02916-8 Date: June 23, 201

SerialID: C97AA466-F20F-6452-D0A

Certified By: Kevin Stock Pierce County Clerk, Washington



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff

vs.

RANDALL, JEFFREY LAMONT,
Defendant

Case No. 08-1-02916-8

ORDER TO SEAL

THIS MATTER, having come before the above-entitled Court by stipulation/motion of the parties to seal the following documents and their attachments:

1. SEE ATTACHED LIST (3 PAGES)

and the Court having read the files and records herein and the Court finding that sealing is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record, Now, Therefore,

IT IS HEREBY ORDERED that the above referenced documents be sealed in the court file and not be opened, except upon Order of the above-entitled Court. In the event of an application for the opening or copying of a sealed document listed above, notice shall be given to the parties or their counsel of record and a hearing shall be noted before the assigned department.

DATED this 30th day of Nov., 2009

THOMAS J. FELNAGLE

JUDGE

RAYMOND M ODELL
WSBA #32181
Attorney for Plaintiff

KAREN L. CAMPBELL
WSBA #23618
Attorney for Defendant

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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APPENDIX “J”

PC Declaration and Bill of Particulars

June 19 2008 2:06 PM

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

KEVIN STOCK
COUNTY CLERK

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-02916-8

vs.

JEFFREY LAMONT RANDALL,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

KEVIN A. MCCANN, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number 081340894;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 13th day of May, 2008, the defendant, JEFFREY LAMONT RANDALL, did commit the crimes of RAPE OF A CHILD IN THE THIRD DEGREE (x4.)

The defendant, Jeffrey LaMont RANDALL is 40 (forty) years old (DOB: 02/05/68) and not married to H.T. whose date of birth is 11/17/92 or V.N. whose date of birth is 02/20/93. Both V.N. and H.T. have disclosed that the defendant engaged in sexual intercourse (penile/vaginal) with them when they were fifteen years old on two separate occasions.

On May 13, 2008 Tacoma Police Officer Jennifer Terhaar was dispatched to Wilson High School where she was put into contact with a female student and her father who wanted to report a possible sex crime involving the student's friends H.T. and V.N. Terhaar learned that the student was concerned for the well being of H.T. and V.N. and believed they were selling drugs for a black male who goes by the name of "House" who has been hanging around the school. Terhaar learned that there were rumors around the school that "House" was supplying H.T. and V.N. with drugs and forcing them to have sex with him in exchange for the drugs. Todd Hilton reported that he observed "House" drive up to a corner near Wilson High School with H.T. in his passenger seat and pick up V.N. who was waiting on the corner with a group of high school kids. Hilton provided Terhaar with the vehicle description and plate number which came back as registered to Pontia Kimbrough. Kimbrough was interviewed and reported that the car belongs to her but that her brother, Jeffrey RANDALL, has been driving the car for the past three months.

On May 26, 2008 Detective Steven Reopelle contacted H.T. at her residence and confronted her about the information he had received indicating she was having sex with House and dealing drugs for him. H.T. admitted that she currently uses marijuana and percocet which she claims to get from "people she meets" but denied selling drugs or having sex with anyone that fit the description of "House."

On June 5, 2008 both H.T. and V.N. were separately interviewed by forensic child interviewer Cornelia Thomas. During the interview with H.T. she admitted that she lied to Detective Reopelle when she told him she had not been having sex with House. H.T. explained that she did so out of fear that the defendant or his "goons" would kill her if she cooperated with the investigation. H.T. indicated that House's real name is Jeffrey RANDALL and that she learned this when she saw a piece of mail in his car. According to H.T., the defendant is known around Wilson High School as the "weed man" because he

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 sold marijuana to the students. H.T. explained that RANDALL began giving her drugs for personal use
2 and in exchange she would package and sell drugs for him. H.T. stated that RANDALL tested her loyalty
3 to him by requiring her to perform certain things at his request. RANDALL threatened H.T. that if she
4 refused to do as he requested he would put her on "restriction" which meant he would cut off her supply
5 of drugs and keep her from seeing her friend, V.N. H.T. stated that RANDALL required her to have sex
6 with him and that she had penile/vaginal intercourse on two occasions with RANDALL at his residence.
7 H.T. described the first time she had sex with RANDALL and indicated that he was unable to "get inside
8 her" on the first attempt so he made her get some baby oil. H.T. reported that RANDALL made her look
9 at him the entire time he was having intercourse with her. H.T. told RANDALL that she was only 15
10 years old and that it was wrong for him to be having sex with her because of her age.

11 During the forensic interview of V.N, it was learned that RANDALL had sexual intercourse with
12 her on two separate occasions, both at RANDALL's residence. V.N. reported that she met RANDALL
13 after a friend called him from a party where V.N. had been pushed into a swimming pool. V.N. stated
14 that RANDALL told her that if she "hung out with him" she would never be disrespected like that. V.N.
15 began selling marijuana for RANDALL and he would provide her with alcohol and marijuana. V.N.
16 disclosed that RANDALL would "put her through tests" to be in his group. According to V.N.
17 RANDALL would threaten that if she did not do his tests he would abandon her and people would treat
18 her "like shit" again. V.N. stated that the final test occurred at RANDALL's house where he required her
19 to take all her clothes off and have intercourse with him (penile/vaginal.) V.N. reported that RANDALL
20 instructed her to put baby oil on his penis, after which he got on top of her and started to have sex with
21 her. V.N. reported that she tried to close her eyes but RANDALL required her to open them and stare at
22 him. V.N. indicated that she told RANDALL not to "cum" inside her to which he responded "Are you
23 serious? Adults don't get kids pregnant." V.N. described a second incident where RANDALL had sex
24 with her, again at his residence. During the second incident, V.N. reported that RANDALL ejaculated
and semen got between her legs. V.N. reported that RANDALL knew she was 15 years old before he had
sex with her because he told her he believed she was 16 or 17 and she corrected him by telling him she
was only 15. According to V.N. RANDALL told her he was "cool with that."

14 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

15 DATED: June 19, 2008
16 PLACE: TACOMA, WA

17 /s/ KEVIN A. McCANN
18 KEVIN A. McCANN, WSB# 25182

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24
DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Teddy Rutt, Deputy.

Dated: Jun 11, 2014 10:44 AM



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Case Number: 08-1-02916-8 Date: June 11, 2014
 SerialID: 8C07D30B-F20F-6452-D096E5DC4A01664C
 Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 34939766 BL 09-01-10

FILED
 IN COUNTY CLERK'S OFFICE

A.M. AUG 31 2010 P.M.
 PIERCE COUNTY, WASHINGTON
 KEVIN STOCK, County Clerk
 BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO.08-1-02916-8

vs.

JEFFREY LAMONT RANDALL

BILL OF PARTICULARS

Defendant.

This Bill of Particulars is being provided to the defense as a courtesy. It is the State's position that the defense has been given sufficient information in the complaint, that by use of due diligence, the defense should be able to adequately prepare for trial. Nevertheless, to avoid any unnecessary delay in trying this case the following Bill of Particulars is being filed.

The defendant JEFFREY LAMONT RANDALL, is charged with four counts of Rape of a Child in the Third Degree, two counts of Involving a Minor in a Transaction to Deliver a Controlled Substance, and two counts of Unlawful Deliver of Controlled Substance to a Person Under the Age of Eighteen with sexual motivation, committed during the period between the 1st day of March, 2008 and the 4th day of June, 2008.

The defendant, Jeffrey LaMont RANDALL aka "House" is 40 (forty) years old (DOB: 02/05/68) and not married to H T whose date of birth is 11/17/92 or V N. whose date of birth is 02/20/93. Both V N and H.T. have disclosed during forensic interviews as well as *during defense interviews* that the defendant, Mr Randall, provided them with marijuana to smoke and additional marijuana for them to sell between the period of March 1st, 2008 and June 4th of 2008. The alleged victims disclosed during

1 defense interviews that between March 1st and June 4th, 2008 they each sold marijuana for Mr. Randall
2 repeatedly and they each smoked marijuana with Mr. Randall repeatedly and that the marijuana they
3 smoked and the marijuana they sold was provided to them by Mr. Randall during the charging period.

4 V.N. would receive calls from the defendant when he wanted to pick her up to sell marijuana and
5 on one occasion his conversation was overheard During that conversation Mr. Randall said to V N , over
6 the phone "Tell me you love me." This was overheard by an independent witness who will testify.

7 The alleged victims V.N and H T also made disclosures during forensic interviews and *defense*
8 *interviews* that they each engaged in sexual intercourse (penile/vaginal, oral/vaginal and oral/penile) with
9 Mr. Randall, when the girls were fifteen years old and not married to either of the victims. These sexual
10 acts occurred on two separate occasions with each victim between March 1st and June 4th, 2008 during the
11 timeframe when they were selling drugs for him.

12 During a *defense interview* of State's witness N.M., he stated that he hung out with the defendant
13 regularly to play basketball and help the defendant get some exercise and loose weight during 2008
14 N.M. said he was aware that V N and H T also hung out with Mr Randall. N.M. disclosed that on one
15 occasion Mr. Randall and he were sitting in Mr. Randall's car when Randall confided in him that he had
16 sex with both V.N , and H.T The defendant told N.M., to keep it a secret and said that the girls wanted
17 pills or weed for it.

18 During a defense interview of victim V.N., she stated that when her classes ended at Oakland she
19 would either ride her bike, or take the bus, over to Wilson Middle School where the defendant would
20 come pick them up The defendant would regularly pick her up and she, H T , and the defendant would
21 drive around in the defendant's car and sell marijuana for the defendant V N stated that the defendant
22 sold drugs every day The victims are expected to testify that they packaged and sold marijuana for the
23 defendant during the charging period. The victims will also testify that the defendant provided them
24 marijuana and he provided pills and cocaine to H T prior having sexual intercourse with her

25 The defendant called V.N , and asked her to hang out with him V.N., said they sat in his car and
smoked pot that Mr Randall provided and he encouraged V N. to have a drink After refusing the

defendant's attempts to get her to drink alcohol numerous times the defendant said to V.N., "In time you will become comfortable with me." That evening the defendant purchased a bottle of vodka and provided it to V N

On August 12, 2009, Karen Campbell, former attorney for the Department of Assigned Counsel, interviewed V.N. During this defense interview V N , disclosed that *"Me, H T., and House were selling weed everyday...we would sell weed until who knows when and he would drop me and H T , off and a couple hours later he would pick us back up."* V.N., went on to disclose to the defense that the defendant "raped" her *"at his house "* V.N. disclosed to the defense that she had been to Mr. Randall's house *".. a good 10 times"* and went into his room *"Probably five or six times."*

V.N disclosed during the defense interview that the first time she had sex with Mr. Randall was during the evening after she snuck out of her mother's home. V.N. disclosed to defense that the defendant had sex with her two times and both times it happened in his room

On June 19th, 2008 the State filed in Superior Court an Information charging Mr. Randall with four counts of Rape Third Degree. Filed with the Information was a declaration of probable cause that included the following nine paragraphs of relevant information:

On May 13, 2008 Tacoma Police Officer Jennifer Terhaar was dispatched to Wilson High School where she was put into contact with a female student and her father who wanted to report a possible sex crime involving the student's friends H.T. and V.N. Terhaar learned that the student was concerned for the well being of H T and V.N. and believed they were selling drugs for a black male who goes by the name of "House" who has been hanging around the school. Terhaar learned that there were rumors around the school that "House" was supplying H T and V.N. with drugs and forcing them to have sex with him in exchange for the drugs.

Todd Hilton, reported that he observed "House" drive up to a corner near Wilson High School with H T. in his passenger seat and pick up V N who was waiting on the corner with a group of high school kids. Hilton provided Terhaar with the vehicle description and plate number which came back as

1 registered to Pontia Kimbrough Kimbrough was interviewed and reported that the car belongs to her but
2 that her brother, Jeffrey RANDALL, has been driving the car for the past three months.

3 On May 26, 2008 Detective Steven Reopelle contacted H.T. at her residence and confronted her
4 about the information he had received indicating she was having sex with House and dealing drugs for
5 him. H.T. admitted that she currently uses marijuana and percocet which she claims to get from "people
6 she meets" but denied selling drugs or having sex with anyone that fit the description of "House "

7 On June 5, 2008 both H.T. and V N. were separately interviewed by forensic child interviewer
8 Cornelia Thomas. During the interview with H.T. she admitted that she lied to Detective Reopelle when
9 she told him she had not been having sex with House H.T. explained that she did so out of fear that the
10 defendant or his "goons" would kill her if she cooperated with the investigation. H.T. indicated that
11 House's real name is Jeffrey RANDALL and that she learned this when she saw a piece of mail in his car.

12 According to H.T., the defendant is known around Wilson High School as the "weed man"
13 because he sold marijuana to the students. H T. explained that RANDALL began giving her drugs for
14 personal use and in exchange she would package and sell drugs for him H.T. stated that RANDALL
15 tested her loyalty to him by requiring her to perform certain things at his request RANDALL threatened
16 H.T. that if she refused to do as he requested he would put her on "restriction" which meant he would cut
17 off her supply of drugs and keep her from seeing her friend, V.N.

18 H T stated that RANDALL required her to have sex with him and that she had penile/vaginal
19 intercourse on two occasions with RANDALL at his residence. H T described the first time she had sex
20 with RANDALL and indicated that he was unable to "get inside her" on the first attempt so he made her
21 get some baby oil. H.T. reported that RANDALL made her look at him the entire time he was having
22 intercourse with her H.T. told RANDALL that she was only 15 years old and that it was wrong for him
23 to be having sex with her because of her age.

24 During the forensic interview of V.N, it was learned that RANDALL had sexual intercourse with
25 her on two separate occasions, both at RANDALL's residence. V.N reported that she met RANDALL
after a friend called him from a party where V.N had been pushed into a swimming pool. V N stated that

1 RANDALL told her that if she "hung out with him" she would never be disrespected like that V.N.
2 began selling marijuana for RANDALL and he would provide her with alcohol and marijuana. V.N.
3 disclosed that RANDALL would "put her through tests" to be in his group According to V.N.
4 RANDALL would threaten that if she did not do his tests he would abandon her and people would treat
5 her "like shit" again.

6 V.N. stated that the final test occurred at RANDALL's house where he required her to take all her
7 clothes off and have intercourse with him (penile/vaginal) V.N reported that RANDALL instructed her
8 to put baby oil on his penis, after which he got on top of her and started to have sex with her V.N
9 reported that she tried to close her eyes but RANDALL required her to open them and stare at him. V.N.
10 indicated that she told RANDALL not to "cum" inside her to which he responded "Are you serious?
11 Adults don't get kids pregnant."

12 V.N. described a second incident where RANDALL had sex with her, again at his residence.
13 During the second incident, V.N reported that RANDALL ejaculated and semen got between her legs
14 V.N. reported that RANDALL knew she was 15 years old before he had sex with her because he told her
15 he believed she was 16 or 17 and she corrected him by telling him she was only 15. According to V.N.
16 RANDALL told her he was "cool with that."

17 This bill of particulars is the basis for the eight counts against Mr. Randall. From this
18 information as well as the discovery that defense has in its possession, including the August 6th,
19 2009 transcripts prepared by Sue Garcia, the August 10th, 2009 transcripts by Connie Church, the
20 August 12th, 2009 transcripts by Laura Gjuka CCR# 2057, the police reports and medical
21 records, the defendant has been apprised with reasonable certainty of the nature of the
22 accusations against him so that he and his attorney may prepare a defense.

23 The defendant also included a motion to dismiss on due process grounds in her motion
24 for a bill of particulars and that motion is without merit Defense argues that the State has failed
25 to allege "when" the drug transactions occurred. This is not true. The State made the defense

Case Number: 08-1-02916-8 Date: June 11, 2014

SerialID: 8C07D30B-F20F-6452-D096E5DC4A01664C

Certified By: Kevin Stock Pierce County Clerk, Washington

1 aware through the charging document that the drug transactions occurred during the charging
2 period of March 1st, 2008 and June 4th, 2008.

3 Finally, the argument that the State must make known "who" the drugs were sold to and
4 demonstrate that the drugs were tested by an expert is contrary with the case law on point. See
5 State v. Hernandez, 85 Wn.App 672, 935 P.2d 623.

6
7 RESPECTFULLY SUBMITTED this 31 day of August, 2010.

8 MARK LINDQUIST
9 Prosecuting Attorney

10 By: 

11 Raymond M. Odell
12 Deputy Prosecuting Attorney
13 WSB # 82181

14 rmo
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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Teddy Rutt, Deputy.

Dated: Jun 11, 2014 10:44 AM



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APPENDIX “K”

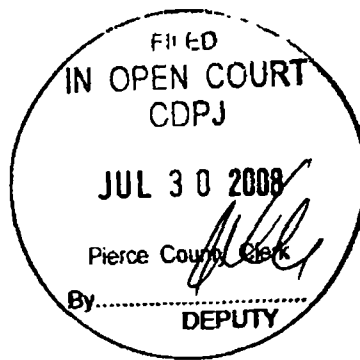
Continuance Orders

Case Number: 08-1-02916-8 Date: June 24, 2014

SerialID: CEA90A81-F20F-6452-D499D7924140F6C6

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02916-8 30242629 ORCTD 07-31-08



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

Jeffrey Randall,
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 41 Prior Continuances 0This motion for continuance is brought by ☐ state ☐ defendant ☐ court.☒ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: Parties need additional time to negotiate DPA
with victim for six weeks☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING	8-21-08	1:30pm	CDPS 21A	
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>8/13/08</u>	IS CONTINUED TO: <u>9/10/08</u> @ 8:30 am Room <u>CDPS 211</u>			

Expiration date is: 10/10/08 (Defendant's presence not required) TTT days remaining: 30DONE IN OPEN COURT this 30 day of July, 2008

Defendant

[Signature]
Attorney for Defendant/Bar # 39229

Judge

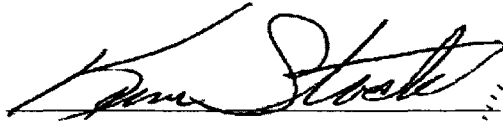
[Signature]
RONALD E. CULPEPPER
Prosecuting Attorney/Bar #

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/QualifiedKARLA JOHNSON
COURT REPORTER
Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.

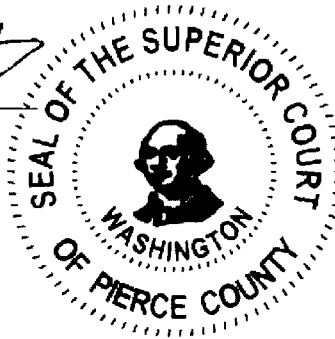
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Alyssa Porter, Deputy.

Dated: Jun 24, 2014 9:15 AM



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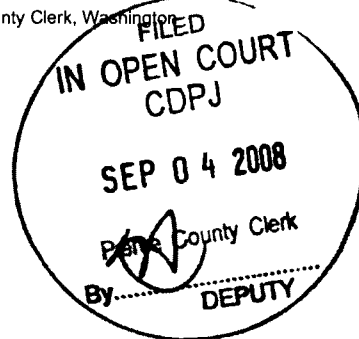
Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C967A146-110A-9BE2-A92821188A7FDBD3

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 30467509 ORCID 08-1-02916-8



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

Jeffrey Randall
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 76 Prior Continuances 1This motion for continuance is brought by ☐ state ☐ defendant ☐ court.☐ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☒ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: to continue negotiations with DA on possible plea☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING	<u>10/2/08</u>	<u>1:30</u>	<u>211</u>	
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>9/10/08</u> IS CONTINUED TO: <u>10/9/08 @ 8:30 am Room</u>				

Expiration date is: 12/10/08 (Defendant's presence not required) TFT days remaining: 30DONE IN OPEN COURT this 4 day of Sept, 2008 ORLANDO

Defendant

[Signature]
Attorney for Defendant/Bar # 39229

Judge

[Signature]
Prosecuting Attorney/Bar # 16901

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, WashingtonR. York
Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy

Dated: Jun 23, 2014 8:44 AM



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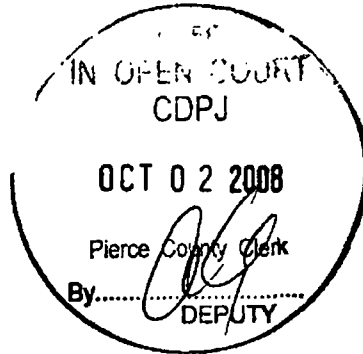
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Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C967A1C3-110A-9BE2-A9D3C302C5F8CC8F

Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

Jeffrey Lamont Randall
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 105 Prior Continuances 2 20This motion for continuance is brought by ☒ state ☒ defendant ☐ court.☒ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: DEFENSE NEEDS TIME TO PREPARE FOR TRIAL☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING	<u>10/23/08</u>	<u>1:30 pm</u>	<u>CDPJ</u>	
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>10/9/08</u>		IS CONTINUED TO: <u>11/10/08 @ 8:30 am Room CDPJ</u>		

Expiration date is: 12/10/08 Defendant's presence not required TFT days remaining: 30DONE IN OPEN COURT this 2 day of October, 2008

Defendant

Attorney for Defendant/Bar #

Judge

Prosecuting Attorney/Bar # 32181

RONALD E. CULPEPPER

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington

Interpreter/Certified/Qualified

Court Reporter
CARLA JOHNSON
COURT REPORTER

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy.

Dated: Jun 23, 2014 8:44 AM



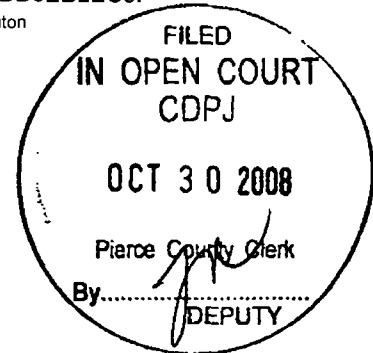
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08-1-02916-8 30833831 ORCTD 10-31-08



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

Jeffrey Randall
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 133 Prior Continuances 3This motion for continuance is brought by ☐ state ☒ defendant ☐ court.☒ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.

Reasons:

new defense counsel on case
just get case☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING	<u>1/9/09</u>	<u>8:45 am</u>	<u>CDP-250</u>	
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>11/10/08</u> IS CONTINUED TO: <u>1/29/09</u> @ 8:30 am Room <u>CDP-250</u>				

Expiration date is: 2/8/09 (Defendant's presence not required)TFT days remaining: 30DONE IN OPEN COURT this 30th day of October 2008

Defendant

[Signature]
Attorney for Defendant/Bar # 33618

Judge

[Signature]
Prosecuting Attorney/Bar # 32181

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington

Interpreter/Certified/Qualified

Court Reporter

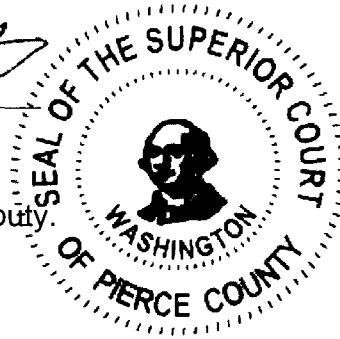
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy

Dated: Jun 23, 2014 8:44 AM

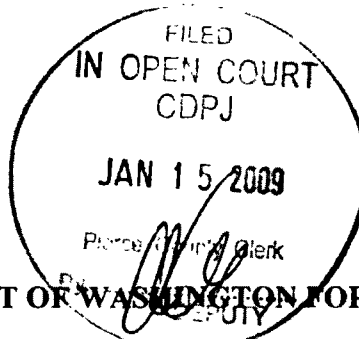


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08-1-02916-8 31302298 ORCTD 01-16-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

Jeffrey Randall
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 210 Prior Continuances 2This motion for continuance is brought by ☐ state ☒ defendant ☐ court.☒ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.

Reasons: this case is going to require extensive investigation. There are a number of witnesses both in se & state and defense possibly the defense feel need to be interviewed.

☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING	2-17-09	8:45am	CDDT-250	# 1967636
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>1/29/09</u>	IS CONTINUED TO: <u>4/14/09 @ 8:30 am Room # 1967637</u>			

Expiration date is: 5/14/09 (Defendant's presence not required)TFT days remaining: 30DONE IN OPEN COURT this 15th day of January 2009Jeffrey Randall
DefendantJ. H. E. Coy
JudgeAttorney for Defendant/Bar # 23618Prosecuting Attorney/Bar # 1641

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified

This is a serious case.
Mr. Randall is looking out up to 60 months in DOC.
Discovery is not complete.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy

Dated: Jun 23, 2014 8:44 AM



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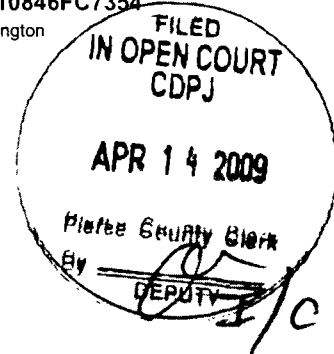
Case Number: 08-1-02916-8 Date: June 24, 2014

SerialID: CED29A08-F20F-6452-D5C2310846FC7354

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 3187225 URCDE 04 14 09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

Jeffrey Randall
Defendant
Cause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 298 Prior Continuances 5
defuseThis motion for continuance is brought by ☒ state ☒ defendant ☐ court.☒ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: No state has not provided discovery as required by Ct order: specifically (1) DAD interviews of witnesses: criminal history of children witnesses.☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>4/14/09</u>		IS CONTINUED TO: <u>6/11/09 @ 8:30 am Room CDPJ-250</u>		

Expiration date is: 7/11/09 (Defendant's presence not required)TFT days remaining: 30DONE IN OPEN COURT this 14 day of April, 2009

Defendant

Attorney for Defendant/Bar # 23618

Judge

Prosecuting Attorney/Bar # 32181

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified
Pierce County, Washington
Kim Baldridge
Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Jun 24, 2014 10:00 AM



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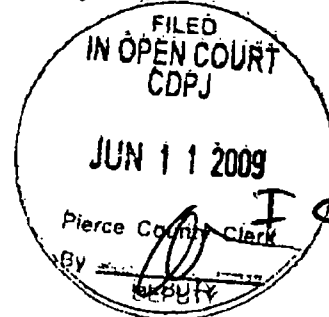
Case Number: 08-1-02916-8 Date: June 24, 2014

SerialID: CEEA82BA-110A-9BE2-A98AFCAD5546C022

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 32235337 ORCTD 06-11-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
PlaintiffCause No 08-1-02916-8

vs.

ORDER CONTINUING TRIAL

Jeffrey Lament Randall
Defendant
Case Age 357. Prior Continuances 6This motion for continuance is brought by ☒ state ☒ defendant ☐ court.

Upon agreement of the parties pursuant to CrR 3.3(f)(1) or

☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: STATE DPA HAS CLE'S WEEK OF JUNE 15TH, MATERIAL WITNESS (VICTIM) OUT OF STATE ON VACATION, FIRST TWO WEEKS OF JULY/DEFENSE NEEDS (INTERVIEWS AND CRIMINALRCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>6/11/09</u>		IS CONTINUED TO: <u>8/11/09 @ 8:30 am Room 250</u>		

Expiration date is: 9/10/09 (Defendant's presence not required)TFT days remaining: 30DONE IN OPEN COURT this 11 day of June, 2009
D. Roberts
Defendant

Yentle
Judge

[Signature]
Attorney for Defendant/Bar # 33618
[Signature]
Prosecuting Attorney/Bar # 32181

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified

Robyn Fielder
Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Alyssa Porter, Deputy.

Dated: Jun 24, 2014 9:15 AM



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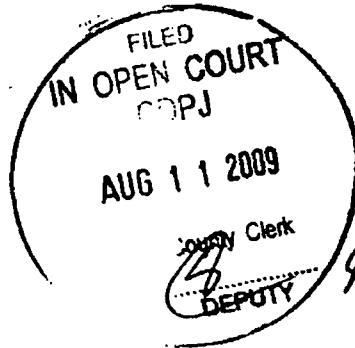
enter SerialID: CEEA82BA-110A-9BE2-A98AFCAD5546C022.

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08-1-02916-8 32619993 ORCTD 08-12-09

Case Number: 08-1-02916-8 Date: June 23, 2014
SerialID: C9676045-110A-9BE2-A9B96DAF4FCCCC24
Certified By: Kevin Stock Pierce County Clerk, Washington



*NORC
Drop & run box*

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

Cause No. 08-1-02916-8

vs.)

ORDER CONTINUING TRIAL

Jeffrey Randall)
Defendant)

Case Age 417 Prior Continuances 7

This motion for continuance is brought by ☐ state ☒ defendant ☐ court.

☒ Upon agreement of the parties pursuant to CrR 3.3(f)(1) or

☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

☐ for administrative necessity.

Reasons: Very complex child rape case; there are at least 11 states witnesses

Defense has interviewed 6. Still needs to interview 6-7 more. Following needed.

Defense needs to obtain school and counseling records of 1 alleged victim.

☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>8/11/09</u>		IS CONTINUED TO: <u>10/09/09 @ 8:30 am Room 260</u> (2)		

Expiration date is: 11/28/09 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 11 day of August, 2009

[Signature] 32181
Defendant

[Signature]
Attorney for Defendant/Bar # 23618

[Signature]
Prosecuting Attorney/Bar # Judge

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington

Court Reporter

several witnesses have refused to answer defense questions. Defense may need to have for deposition. Extensive nation's in line anticipated. defense at case in 10/08. Defense at QVO in bureau of victims in 4/09. 7 hours of audio/ video evidence to review. Cant return needed 3-6.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy

Dated: Jun 23, 2014 8:43 AM



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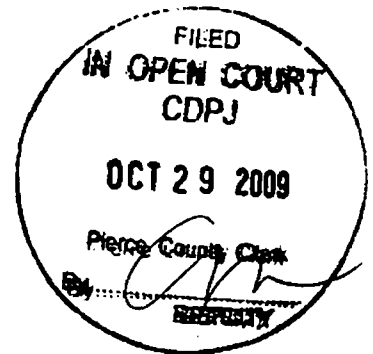
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: C9676045-110A-9BE2-A9B96DAF4FCCCC24.

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08-1-02916-8 JJ106170 ORCTD 10-29-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

Jeffrey Randall
Defendant
Cause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 447 Prior Continuances 8This motion for continuance is brought by ☐ state ☒ defendant ☐ court.☒ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: DPA in Interpreter case Dept 19 on 11/2/09 -state to provide. Defense needs to draft motionsin issue for child sex case. Defense still needs to☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons Complete for a continuance and the benefit of postponement outweighs the detriment to the victim. sent investigator.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING <u>motion to compel discovery</u>	<u>11-5-09</u>	<u>1:30pm</u>	<u>CDJ-260</u>	
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>10/29/09</u>	IS CONTINUED TO: <u>11/3/09 @ 8:30 am Room 260</u> <u>KM</u>			

Expiration date is: 1/2/10 (Defendant's presence not required) TFT days remaining: 50DONE IN OPEN COURT this 29 day of October 2009
D. Street
Defendant

Kevin Stock
Attorney for Defendant/Bar # 23618

Judge

Kevin Stock
Prosecuting Attorney/Bar # 32181

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified

Court Reporter

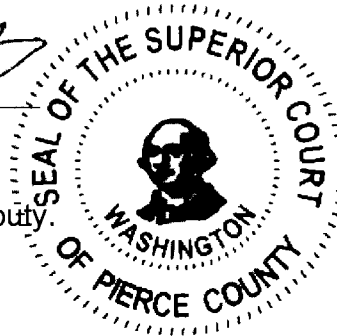
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy.

Dated: Jun 23, 2014 8:43 AM



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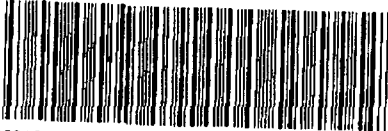
enter **SerialID: C965FA5C-F20F-6452-D4B81B1C3C3E8BFE**.

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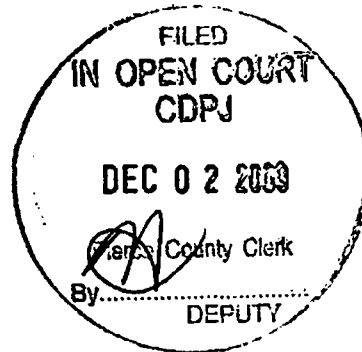
Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C9676585-110A-9BE2-A95329AE3438B8E1

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 33304060 ORCTD 12-03-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

vs.)

Jeffrey Randall,)
Defendant)Cause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 532 Prior Continuances 9This motion for continuance is brought by ☒ state ☒ defendant ☐ court.☒ Upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity. DEFENSEReasons: New attorney assigned case. Time needed to prepare for trial.☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input checked="" type="checkbox"/> STATUS CONFERENCE HEARING / <u>REARR</u>	<u>1/28/10</u>	<u>8:30</u>	<u>260</u>	<u>2116846/45</u>
<input checked="" type="checkbox"/> TRIAL	<u>2/11/10</u>	<u>8:30</u>	<u>260</u>	
THE CURRENT TRIAL DATE OF: <u>12/3/09</u> IS CONTINUED TO: <u>2/11/10</u> @ 8:30 am Room <u>260</u>				

Expiration date is: 3/13/10 (Defendant's presence not required)TFT days remaining: 30 2116849DONE IN OPEN COURT this 3 day of Dec, 2009.Def. OBJECTS to Cont.Defendant Edgar and J. DeloitJudge [Signature]JUDGE THOMAS FELNAGLE
DEPT. 15Attorney for Defendant/Bar # 21673Prosecuting Attorney/Bar # 32181

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified_____
Court Reporter

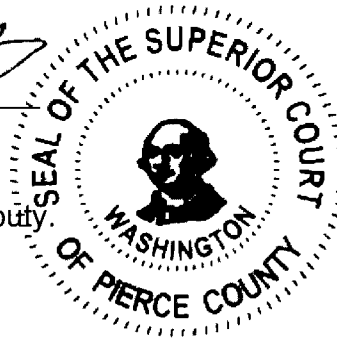
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy.

Dated: Jun 23, 2014 8:43 AM



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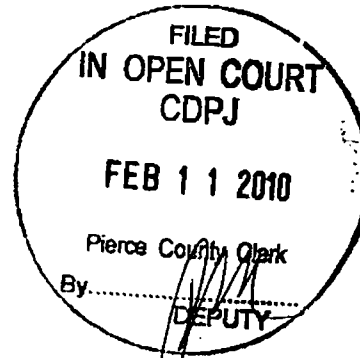
Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C97BF1A7-110A-9BE2-A97C894C40F8766A

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 33748614 ORCTD 02-11-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

vs.)

Jeffrey Randall)
Defendant)Cause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 601 Prior Continuances 10This motion for continuance is brought by ☒ state ☐ defendant ☐ court.☐ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☒ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.

Reasons: The State has 2 juvenile victims, both victims are necessary to proceed. One of the juvenile victims is on vacation out of the country and will return 3/7. A to be Rearraigned day of trial.

☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>2/11/10</u>	IS CONTINUED TO: <u>3/4/10 @ 8:30 am Room 260</u>			

Expiration date is: 4/4/10 (Defendant's presence not required) Good date! TFI days remaining: 30DONE IN OPEN COURT this 11 day of Feb, 2010

Defendant

[Signature]
Attorney for Defendant/Bar # 21673

Judge

[Signature]
Prosecuting Attorney/Bar # 35465

VICKI L. HOGAN

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington_____
Court Reporter **RAELENE SEMAGO**

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM

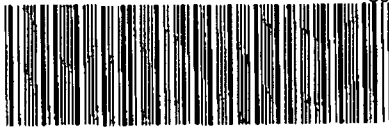


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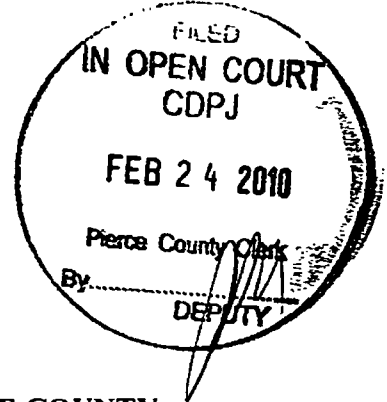
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

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08-1-02916-8 33819670 ORCTD 02-24-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

JEFFREY LAMONT RANDALL
Defendant

Cause No. 08-1-02916-8

IIC

ORDER CONTINUING TRIAL

Case Age 015 Prior Continuances 11

This motion for continuance is brought by ☐ state ☒ defendant ☐ court.

Upon agreement of the parties pursuant to CrR 3.3(f)(1) or

It is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

☐ for administrative necessity.

Reasons: New def. atty. on case, who doesn't yet have the case file from the prior atty, and who needs time to investigate and prepare the case. NOTE: Def counsel hopes to be ready for trial on the new date

☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input checked="" type="checkbox"/> STATUS CONFERENCE HEARING	4-13-10	8:30AM	CDPJ - 260	JN
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: 3-4-10	IS CONTINUED TO: 5-12-10 @ 8:30 am Room CDPJ 260			

Expiration date is: 6-14-10 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 24 day of Feb, 2010.

DEF. OBJECTS TO CONTINUANCE
PRESENT IN COURT

Defendant

Attorney for Defendant/Bar #23085

Judge

Prosecuting Attorney/Bar #23469

VICKI L. HOGAN

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

RAELENE SEMAGO

Interpreter/Certified/Qualified
Pierce County, Washington

Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM

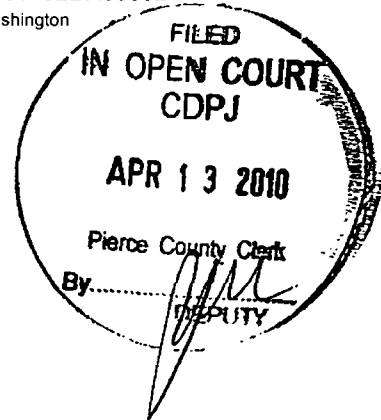
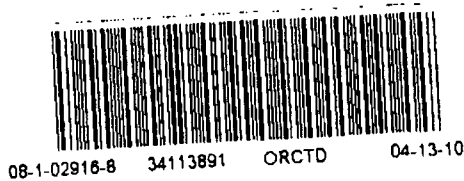


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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

Jeffrey Lament Randall,
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 663 Prior Continuances 12This motion for continuance is brought by ☒ state ☒ defendant ☐ court.

Upon agreement of the parties pursuant to CrR 3.3(f)(1) or

☒ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: State is going to rearrest def. on additional charges. Defense counsel needs additional time to prepare. INV. BROTON heardNOTE: Def. objects to continuance☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

1. <u>PRE-ARRESTMENT</u>	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING	4-15-10	9:00 AM	CDP2	(ES)
<input type="checkbox"/> STATUS CONFERENCE HEARING				
2. <u>OMNIBUS HEARING</u>	6-8-10	9:30 AM	CDP2	(ES)
3. THE CURRENT TRIAL DATE OF: <u>5-12-10</u>	IS CONTINUED TO: <u>7-12-10 @ 8:30 am Room CDPJ</u> (ES)			

Expiration date is: 8-11-10 (Defendant's presence not required) TFI days remaining: 30DONE IN OPEN COURT this 13th day of April, 2010.

Present in Court:

Objects to Continuance

Defendant

Attorney for Defendant/Bar # 23085

Judge

Prosecuting Attorney/Bar # 27467

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified
Pierce County, Washington_____
SHERI SCHELBERT
Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

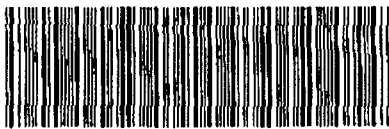
enter SerialID: C97A88D0-F20F-6452-D5D190492BA8836B.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

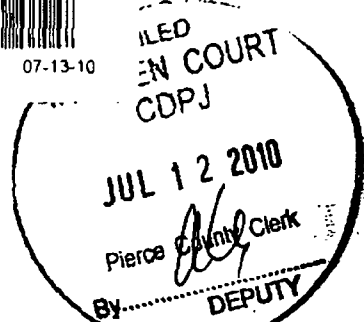
Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C97BF11A-110A-9BE2-A9C8A1976BA55FF2

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 34636317 ORCTD 07-13-10



8/30 good order
for proof of
I/C whole time

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)Cause No. 08-1-02916-8

vs.)

ORDER CONTINUING TRIAL

JEFFREY LAMONT RANDALL)
Defendant)Case Age 753 Prior Continuances 13This motion for continuance is brought by ☐ state ☒ defendant ☐ court.☐ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☒ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: Def atty (per state) is #5 def. atty on case. Def. atty is still reviewing the work of prior attorneys and believes that all investigation & interviews are required☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>7-12-10</u>		IS CONTINUED TO: <u>8/30 @ 8:30 am Room C10</u>		

Expiration date is: 8/30/10 (Defendant's presence not required)TFT days remaining: 30DONE IN OPEN COURT this 12th day of July, 2010.Present in Court
Defendant Subjects to ContinuanceJudge [Signature]Attorney for Defendant/Bar # 2309Prosecuting Attorney/Bar # 3769

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington

Kellie Smith

Interpreter/Certified/Qualified

Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

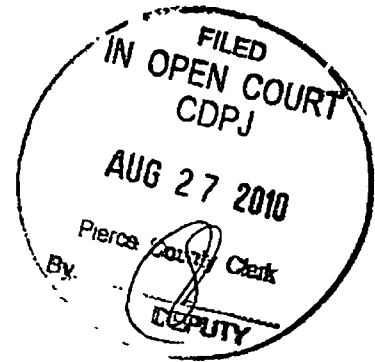
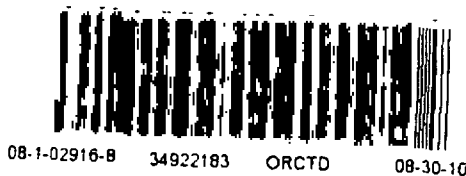
enter SerialID: C97BF11A-110A-9BE2-A9C8A1976BA55FF2.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C97A8853-F20F-6452-DC53FAB4C6405046

Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

vs.)

JEFFREY LAMONT RANDALL)
Defendant)Cause No. 08-1-02916-8

ILC

ORDER CONTINUING TRIAL

Case Age 798 Prior Continuances 14This motion for continuance is brought by ☐ state ☒ defendant ☐ court.☐ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☒ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or (good cause found)☐ for administrative necessity.Reasons: See Def's Motion to Dismiss, 8-27-10. Def. counsel needs additional time; State does not oppose continuance to 9/7/10☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>8-30-10</u>	IS CONTINUED TO: <u>9/7/10 @ 8:30 am Room COA-260</u>			

Expiration date is: _____ (Defendant's presence not required)

TFT days remaining: 30DONE IN OPEN COURT this 27th day of Aug., 2010.
PRESENT IN COURT

LINDA CJ LEE

OBJECTS TO CONTINUANCE
Defendant [Signature]Judge [Signature]

Attorney for Defendant/Bar #23081-

Prosecuting Attorney/Bar #28211

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington

Interpreter/Certified/Qualified

Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



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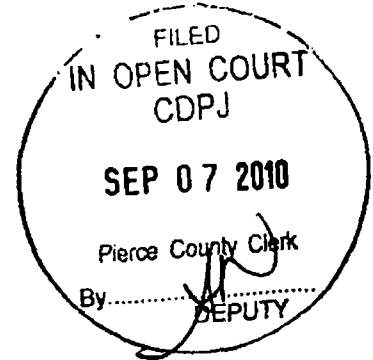
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: C97A8853-F20F-6452-DC53FAB4C6405046.

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08-1-02916-8 34991858 ORCTD 09-10-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

JEFFREY L. RANDALL,
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 810 Prior Continuances 15This motion for continuance is brought by ☐ state ☐ defendant ☒ court.☐ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☒ for administrative necessity.Reasons: There are no courtrooms available. Continue one day☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.**IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:**

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>9-7-10</u>	IS CONTINUED TO: <u>9-8-10</u> @ 8:30 am Room <u>260</u>			

Expiration date is: 11-17-10 (Defendant's presence not required) TFT days remaining: 69DONE IN OPEN COURT this 7th day of Sept., 2010.Jeffrey Randall
Defendant Objects to Subpoena
to Subpoena Custody
DefendantJohn K.
Attorney for Defendant/Bar # 23085

Judge

LINDA CJ LEEProsecuting Attorney/Bar # 32181

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington

Interpreter/Certified/Qualified

Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



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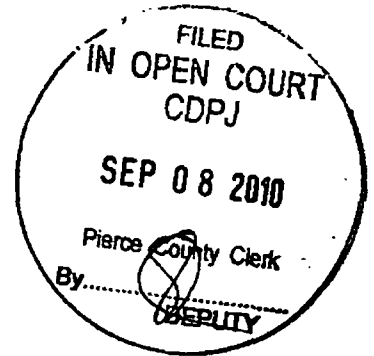
enter SerialID: C97BF38B-110A-9BE2-A9BB96210D387D06.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

08-1-02916-8 34991861 ORCTD 09-10-10

Case Number: 08-1-02916-8 Date: June 23, 2014
SerialID: C97C056D-110A-9BE2-A90621A979B21E24
Certified By: Kevin Stock Pierce County Clerk, Washington

9741 9/10/2010 00004



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

vs.)

JEFFREY LAMONT RANDALL)
Defendant)

Cause No. 08-1-02916-8

IC

ORDER CONTINUING TRIAL

Case Age 811 Prior Continuances 16

This motion for continuance is brought by ☐ state ☐ defendant ☒ court.

☐ upon agreement of the parties pursuant to CrR 3.3(f)(1) or

☒ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

☒ for administrative necessity.

Reasons: There are no courtrooms available that can accommodate this trial before defense counsel becomes unavailable (on 9-24-10)

☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>9-8-10</u>	IS CONTINUED TO: <u>9-9-10</u> @ 8:30 am Room <u>CPA-260</u>			

Expiration date is: 10-6-10 (Defendant's presence not required)

TFT days remaining: 28

DONE IN OPEN COURT this 8th day of Sept., 2010.

Present, In Custody, Objects
to Continuance

Defendant

[Signature]
Attorney for Defendant/Bar #23085

Judge

[Signature]
Prosecuting Attorney/Bar # 32181

LINDA CJ LEE

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington

Interpreter/Certified/Qualified

Court Reporter

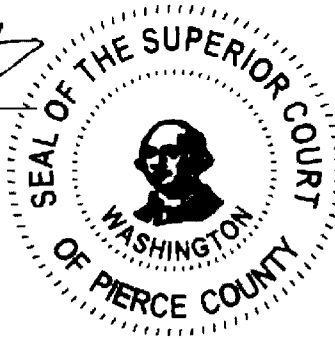
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



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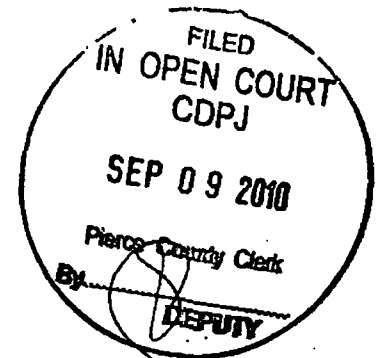
This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C97C033B-110A-9BE2-A968D729A1A55D82

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02916-8 34991867 ORCTD 09-10-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

JEFFREY LAMONT RANDALL,
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 812 Prior Continuances 18This motion for continuance is brought by ☐ state ☒ defendant ☐ court.~~Upon~~ agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: This case is expected to take 2 weeks to conclude. There are no departments available at this time. The def. has exercised his right to Affiant Dept. 9. Defense counsel will be on vacation/furlough 9-5-10/10-3-10.☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/>				
THE CURRENT TRIAL DATE OF: <u>9-9-10</u>	IS CONTINUED TO: <u>11/17/10 @ 8:30 am Room 260</u> CDPJ			

Expiration date is: 12/15/10 (Defendant's presence not required)TFT days remaining: 30 daysDONE IN OPEN COURT this 9th day of Sept., 2010.

Defendant
Attorney for Defendant/Bar # 2303,-

Judge
Prosecuting Attorney/Bar # 28216

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified
Pierce County, Washington_____
Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: C97C033B-110A-9BE2-A968D729A1A55D82.

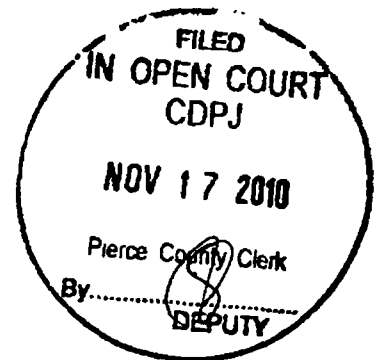
This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C97AA3DA-F20F-6452-DE17790B6FC2FF9E

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02916-8 35405044 ORCTD 11-10-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

JEFFREY LAMONT RANDALL,
DefendantCause No. 08-1-02916-8

ORDER CONTINUING TRIAL

Case Age 881 Prior Continuances 7This motion for continuance is brought by ☒ state ☒ defendant ☐ court.☒ upon agreement of the parties pursuant to CrR 3 3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3 3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: Defense atty in trial; P out of office 11/18-11/19; no jury 11/22-11/26☐ RCW 10.46 085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF <u>11-17-10</u>	IS CONTINUED TO: <u>11-29-10</u> @ 8:30 am Room <u>260</u>			

Expiration date is: _____ (Defendant's presence not required) TFT days remaining: 30DONE IN OPEN COURT this 17 day of Nov, 2010.objects
DefendantLaura Cornell
Attorney for Defendant/Bar # 22860Judge [Signature][Signature]
Prosecuting Attorney/Bar # 4013

LINDA CJ LEE

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington_____
Court Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



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This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

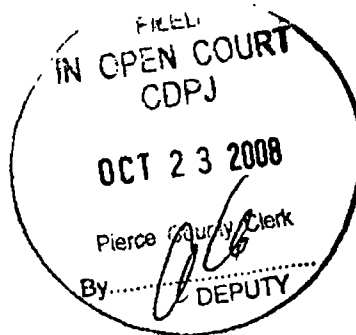
APPENDIX “L”

Defense attorney withdraw and Defendant Affidavit of Prejudice

Case Number: 08-1-02916-8 Date: June 23, 2014
 SerialID: C96785CF-110A-9BE2-A9C762B4AED2AB54
 Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 30786807 MTWD 10-24-08



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

JEFFREY RANDALL,

Defendant.

Case No.: 08-1-02916-8

MOTION TO WITHDRAW AND
 DECLARATION IN SUPPORT

TO: THE CLERK OF COURT

TO: THE PROSECUTING ATTORNEY

Gregory Mitchell, counsel for defendant Jeffrey Randall, request the permission of the court to withdraw as counsel. This motion is based upon the record herein and upon the attached declaration.

Dated this 17TH Day of October, 2008.

Gregory Mitchell, WSBA 39229

MOTION TO WITHDRAW

Law Office Of Gregory C. Mitchell
 215 So. 64TH St.
 Tacoma, WA 98408
 Phone: (253) 345-2521
 Fax: (253) 238-3909

Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C96785CF-110A-9BE2-A9C762B4AED2AB54

Certified By: Kevin Stock Pierce County Clerk, Washington

DECLARATION

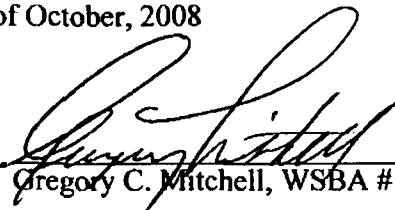
08-1-02916-8

I Gregory C. Mitchell, am over the age of eighteen and competent to testify and hereby declare as follows:

1. I am currently counsel of record for Jeffrey Randall
2. I learned that a situation has arisen that ~~causes~~ ^{causes} a conflict of interest.
3. I have informed Mr. Randall of the conflict and that I must withdraw from his case.
4. I have also informed the prosecution that a conflict of interest has become known and they have no objections.
5. I request the court to grant my withdrawal from the case and appoint counsel for Mr. Randall.

I declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct .

SIGNED AT Tacoma, Washington, this 17TH day of October, 2008



Gregory C. Mitchell, WSBA # 39229

MOTION TO WITHDRAW

Law Office Of Gregory C. Mitchell
215 So. 64TH St.
Tacoma, WA 98408
Phone: (253) 345-2521
Fax: (253) 238-3909

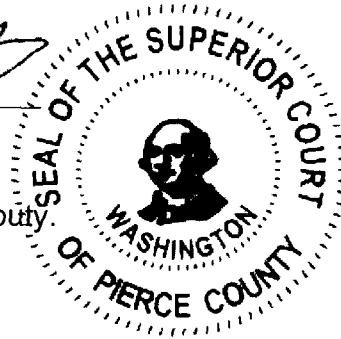
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy.

Dated: Jun 23, 2014 8:44 AM



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enter **SerialID: C96785CF-110A-9BE2-A9C762B4AED2AB54**.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

October 29 2008 11:06 AM

KEVIN STOCK
COUNTY CLERK

Next Proceeding: 11/10/08 08:30 AM JURY TRIAL
Prosecutor: RAYMOND M ODELL

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

THE STATE OF WASHINGTON,

Plaintiff,

vs.

JEFFREY LAMONT RANDALL

Defendant.

NO. 08-1-02916-8

NOTICE OF APPEARANCE

TO: Clerk of the Superior Court
AND TO: Pierce County Prosecuting Attorney

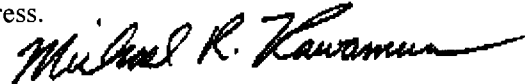
PLEASE TAKE NOTICE that the above-named defendant appears in the above-entitled action by and through his/her assigned counsel of record:

KAREN L. CAMPBELL
WSBA #23618
911 TACOMA AVE. S., SUITE 200

TACOMA, WA 98402-3696
Phone: 798-7089

Service of all further pleadings, notices, documents or other papers herein should be served upon said defendant by serving said attorney at the above address.

DATED: 29 day of October, 2008



Michael R Kawamura, WSBA # 17202
Director of Assigned Counsel
949 Market Street, Ste 334
Tacoma, Washington 98402

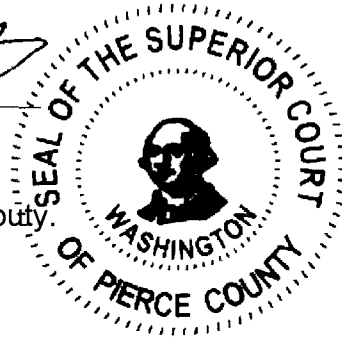
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy.

Dated: Jun 23, 2014 8:44 AM



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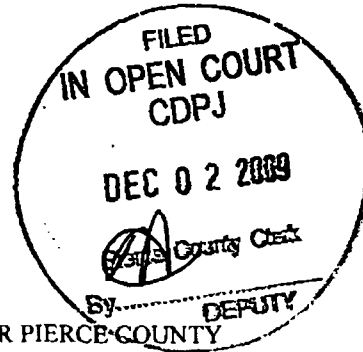
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: C9663840-F20F-6452-DC2B9D3BC6986265.

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08-1-02916-8 33304056 ORWA 12-03-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

State of Washington,)
 Plaintiff,)
 v.) No. 08-1-02916-8
JEFFREY L. RANDALL)
 Defendant.) **Order of Withdrawal and**
) **Substitution of Counsel (No Conflict)**
) **ORWA**

1. This matter comes before the undersigned judge upon the application of

[☒ defense counsel KAREN CAMPBELL
(print name)[] the state's attorney _____
(print name)

to withdraw as attorney of record in the above-entitled case for the following reasons:

Office Closure

2. This withdrawal is not based upon an assertion of conflict.

3. The court hereby orders that the above named counsel be allowed to withdraw.

4. The Court approves the following substitution of counsel as attorney of record for the defendant.

EDWARD DELCOSTA #21673
(print name or leave blank if no substitution)5. Return with attorney is scheduled for _____
DATE TIME PLACE APPROVAL #6. The next scheduled court date is set 1/20/10 8:30 Rm #260 2116846/45
DATE TIME PLACE APPROVAL #Dated 12/3, 2009# Prior Substitutions: _____ Case Age: 532
(This information is required)

Defendant

[Signature]
Withdrawing Counsel/WSBA # 23348[Signature]
Substituting Counsel/WSBA # 21673JUDGE THOMAS FELNAGLE
DEPT-15[Signature]
Judge
Prosecuting Attorney/WSBA # 32180

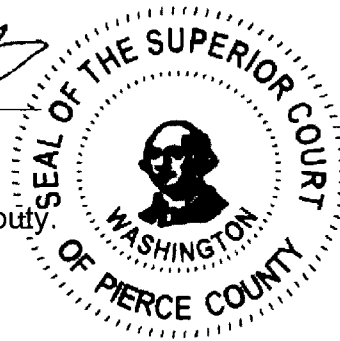
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Dorylee Phillips-Reyes, Deputy.

Dated: Jun 23, 2014 8:43 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

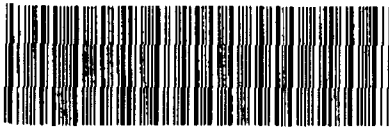
enter **SerialID: C965FACA-F20F-6452-D859B86B6BA26CDC**.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

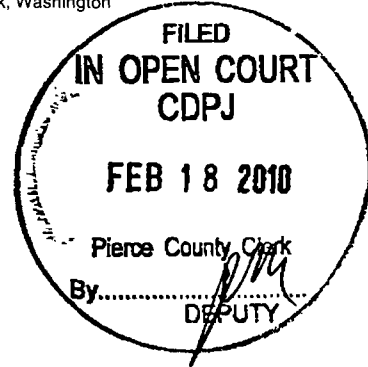
Case Number: 08-1-02916-8 Date: June 23, 2014

SerialID: C97A99A8-F20F-6452-DC371CD1DA744079

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-02916-8 33783253 OR 02-18-10



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff

vs.

RANDALL, JEFFREY LAMONT,

Defendant

Cause No: 08-1-02916-8

ORDER

(OR)

Finding Conflict
of Defence Counsel

The Court finds that Defence Counsel
has a conflict given the bar complaint that
the defendant filed. Defence Counsel is disqualified
and DAC is ordered to appoint a new attorney.

DATED this 18 day of Feb, 20 10.

JUDGE

VICKI L. HOGAN

Attorney for Plaintiff/Petitioner
WSBA# 35469

Attorney for Defendant/Respondent
WSBA# 21673

Jeff P. H.

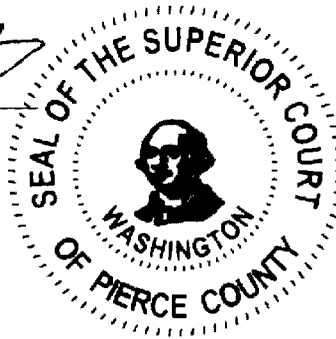
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



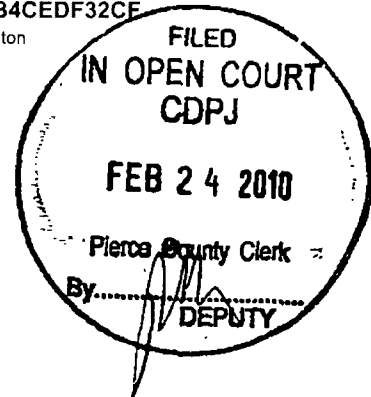
Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: C97A99A8-F20F-6452-DC371CD1DA744079**.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

08-1-02916-8 33819667 ORATSC 02-24-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

State of Washington,)
 Plaintiff,)
 v.) No 08-1-02916-8
 JEFFREY RANDALL,) **Order of Withdrawal and**
) **Substitution of Counsel (No Conflict)**
 Defendant.) **ORATSC**

1. This matter comes before the undersigned judge upon the application of
 [X] defense counsel EDWARD DECOSTA, WSBA #21673

[] the state's attorney _____
 (print name)

to withdraw as attorney of record in the above-entitled case for the following reasons:
 in the administration of justice.

2. This withdrawal is not based upon an assertion of conflict.

3. The court hereby orders that the above named counsel be allowed to withdraw.

4. The Court approves the following substitution of counsel as attorney of record:

JANE PIERSON, WSBA #23085

5. Trial is scheduled for: 3/4/10 8:30 AM CDPJ
 DATE TIME PLACE APPROVAL #

6. The next scheduled court date is set: 2/24/10 8:30 AM CDPJ
 DATE TIME PLACE APPROVAL #

Dated February 24, 2010

Prior Substitutions: 0 Case Age: 610
 (This information is required)

NOTIFIED BY MAIL
 Defendant

Edward R. Decosta
 Withdrawing Counsel/WSBA # 21673

Jane Pierson
 Substituting Counsel/WSBA # 23085

Judge

SCOTT PETERS, WSBA #
 Deputy Prosecuting Attorney

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 23 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Kayley Pitzele, Deputy.

Dated: Jun 23, 2014 9:06 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter SerialID: C97C04F0-110A-9BE2-A9A661B4CEDF32CF.

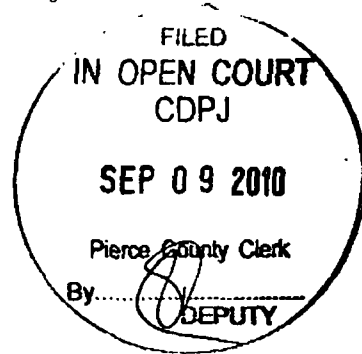
This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

Case Number: 08-1-02916-8 Date: June 24, 2014

SerialID: CEE1563F-F20F-6452-D1FE5EFD3E50ACD

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02916-8 34991865 AFPRJ 09-10-10



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON
Plaintiff,

vs.

RANDALL, JEFFREY LAMONT
Defendant.

Case No. 08-1-02916-8

AFFIDAVIT OF PREJUDICE
AFPRJ

Pursuant to RCW 9A.72.085, GR13, and RCW 4.12.050, I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

☐ I am the attorney for _____.

☒ I am a party in this case.

I believe that I or my client cannot have a fair and impartial trial or sentencing before Judge MURPHY, Department 9 of the above entitled court before whom this case is scheduled to be heard.

Sept. 9, 2010, Pierce County, Washington
Date and Place

Jeffrey Randall
Signature

LINDA CJ LEE
JUDGE

IF THIS MATTER IS CRIMINAL, ORDER MUST BE SIGNED AND FILE STAMPED ON DATE OF DISQUALIFICATION OF JUDGE.

DEFENDANT'S TIME FOR TRIAL EXPIRATION DATE WILL CHANGE.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of June, 2014



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Jun 24, 2014 10:16 AM



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This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

PIERCE COUNTY PROSECUTOR

July 03, 2014 - 4:30 PM

Transmittal Letter

Document Uploaded: prp2-459949-Response.pdf

Case Name: IN RE: THE PRP OF RANDALL

Court of Appeals Case Number: 45994-9

Is this a Personal Restraint Petition? ☐ Yes ☐ No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

☒ Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us